(22,327)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 141.

EMILIA RIJOS CORDOVA, APPELLANT,

vs.

TERESA FOLGUERAS Y RIJOS ET AL.

APPEAL FROM THE SUPREME COURT OF PORTO RICO

INDEX.

	Original.	Print
Caption	1	1
Record from district court of San Juan	2	1
Complaint	2	1
Demurrer to complaint	7	4
Judgment	11	6
Notice of appeal	13	7
Attorney's certificate to record	14	7
Opinion by Justice del Toro	15	8
Judgment	22	11
Notice of appeal	23	12
Order allowing appeal	24	13
Appeal bond	25	13
Citation and service	28	15
Clerk's certificate	30	15

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 25, 1912.

1 In the Supreme Court of Porto Rico.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff & Appellant,
vs.
TERESA, JOSÉ, MARIANA, ENCARNACIÓN and RAFAELA FOLGUERAS y Rijos, Manuel Benito de Peña and Herminia Rijos Laza, Defendants & Respondents.

Appeal from a Judgment Rendered by the District Court for the Judicial District of San Juan, Porto Rico.

Transcript of Record on Appeal to the Supreme Court of the United States.

Record of the proceedings of the Supreme Court of Porto Rico in the above entitled case, which is an action involving a judicial declaration of the status of natural child, a liquidation of inheritance, and delivery of real property, and the proceeds of fruits and rents thereof, the said case having been disposed of at the third regular term of said court, in the year 1910, the following papers having been filed, and the following proceedings having been had therein, to wit:

2 ISLAND OF PORTO RICO,
Judicial District of San Juan:

In the District Court.

Civil No. —.

No. —.

EMILIA RIJOS CÓRDOVA, Plaintiff,
vs.
TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y Rijos, Manuel Benito de Peñas, y Hermania Rijos Laza, Defendants.

Action Involving a Judicial Declaration of the Status of Natural Child; a Liquidation of Inheritance; and Delivery of Real Properties and the Proceeds of Fruits and Rents Thereof.

Complaint.

Now comes before the Court, Emilia Rijos Córdova, of age and a resident of San Juan, by Jacinto Texidor and Domingo M. Massari, her counsel, and brings this suit, and respectfully alleges and states:

1. That the plaintiff is a natural daughter of Don Santiago Rijos Correa and Doña Emilia Córdova; and that the said Santiago Rijos and Emilia Córdova, the latter being a widow and the former unmarried, intended to contract a legitimate marriage, and in good faith believed to have so contracted a marriage, before the priest Eulogio Clemente de Saldaña, on the 2nd of June, 1863, at San Juan, Porto Rico; and that from this date they both lived together as if they were married, and under the belief that their union
3 had been made by a marriage, and publicly enjoyed the consideration of legitimate husband and wife. And the plaintiff alleges that as a result of said union between Don Santiago Rijos y Correa and Doña Emilia Córdova, two children were born: one named José, who died in childhood, and the other, the plaintiff herein.

2. The plaintiff alleges that, ever since she was born, Don Santiago Benito Rijos publicly acknowledged her as his daughter, giving her the title of legitimate daughter, and always attending to the support and needs of the plaintiff, as a true affectionate father, and calling her his daughter in his conversations and correspondence.

3. The plaintiff further alleges: that Santiago Benito Rijos y Correa died suddenly on the 29th day of April, 1869, without having made any will, though he was ready to make the same in favor of the plaintiff and of the mother of the latter, Doña Emilia Córdova, for which purpose he had already given his instructions to his Notary.

4. The plaintiff alleges: that Doña Encarnación, Doña Mariana and Doña Rafaela Rijos y Correa, who are sisters of Don Santiago Benito Rijos y Correa, and the only members of his family living at the time when the plaintiff was born, had knowledge of the birth of the plaintiff and of her status as daughter of Don Santiago Benito, and though they denied the plaintiff the status of legitimate daughter of the said Santiago Benito, they considered and acknowledged her as his natural daughter.

5. The plaintiff further alleges: that to her father Santiago Benito Rijos y Correa belonged, as inheritance from his parents Juan Rijos and Rafaela Correa, one fifth of the properties of the said inheritance, which, according to the best information and belief of the plaintiff, was constituted by the sugar cane plantation known
4 as "Santa Elena," situated in Toa-Baja; by an estate known as "El Higuillar," in the same jurisdiction; by the house now occupied by the "Ateneo de Puerto Rico" and "Casino Español de Puerto Rico," and by other houses in San Juan, with regard to which the plaintiff has been unable to secure reliable information.

6. The plaintiff alleges: that when Don Santiago Benito Rijos died, he had no other descendants who could inherit from him but the plaintiff and another natural daughter, who is the defendant Herminia Rijos Laza, and that Doña Mariana, Doña Rafaela and Doña Encarnación Rijos, Disregarding absolutely the rights of the plaintiff Emilia Rijos, appropriated to, and divided among them-

selves, the inheritance of Don Santiago Benito Rijos, and gave a small participation therein to the other natural daughter Herminia Rijos, and that they took possession of all the properties and interests, owned by the said Don Santiago, and of those which belonged to him by inheritance from Doña Rafaela Correa, giving also a small participation in said properties to the children and heirs of Don Eduardo Rijos Correa.

7. The plaintiff alleges: that according to her best information, the defendants herein are now in possession of the properties and interests belonging to Santiago Benito Rijos, as above stated, and that they are in said possession under the following titles:

Manuel Benito de Peña, as heir and legatee of Doña Encarnación Rijos and of Doña Rafaela Rijos.

The defendants by the names of Fulgueras y Rijos, as heirs of Doña Mariana Rijos and as heirs and legatees of Doña Rafaela Rijos, the amount of their respective inheritances and bequests, the plaintiff being unable to fix.

Doña Herminia Rijos Laza as natural daughter of Santiago Rijos.

And the Succession of Eduardo Rijos as heirs and repre-
5 sentatives of the latter.

And that all of the above named persons have accepted said inheritances purely and simply, not only with regard to the rights of their principal in issue, but also with regard to his obligations.

8. The plaintiff alleges: that all of the defendants herein are in possession of the properties constituting the inheritance of Don Santiago Benito Rijos, holding the same interests therein as their respective ancestors appropriated to themselves, and that the defendant Herminia Rijos possesses the interest which was therein adjudicated to her; and that every one of the said defendants had knowledge, at the time they accepted the said properties, regarding the status of the plaintiff herein, as natural daughter of Santiago Benito Rijos.

9. The plaintiff alleges: that Doña Encarnación and Doña Rafaela Rijos died in San Juan, Porto Rico, after the distribution of the properties of the inheritance of Don Santiago Benito Rijos had been made.

10. This plaintiff alleges: that ever since she became of age, she has not failed to make efforts, extrajudicially, with regard to the defendants, and, formerly, as to their ancestors, so as to obtain the interest belonging to her in the inheritance of Don Santiago Benito, and to obtain her recognition as daughter of the latter, though in the character of legitimate daughter, which status the plaintiff believed she possessed; but Doña Mariana, as well as Doña Encarnación and Doña Rafaela Rijos, and, afterwards, the defendants herein, have refused to give the plaintiff any participation whatsoever in the aforesaid inheritance, though they regarded her as daughter of Don Santiago Rijos, denying her, however, the character of legitimate daughter.

11. The plaintiff alleges: that this action is not brought
6 against the children and heirs of Don Eduardo Rijos y Correa because they have shown themselves ready to give to the

plaintiff such participation in the properties of the inheritance of Santiago Rijos, as might belong to her; and that such is the best information and belief of the plaintiff with regard thereto.

12. The plaintiff alleges: that she has been, during all her life, in constant possession of the status of daughter of Santiago Benito Rijos, which possession has been established by direct recognition made by the latter, and direct acts executed by him, though under the belief, which he had, that the plaintiff was his legitimate daughter.

13. The plaintiff further alleges: that the defendants have possessed the interests belonging to Don Santiago Benito Rijos in the real properties above described, without good faith, and for a length of time less than twenty years.

Wherefore the plaintiff prays the Court to render judgment in her favor, declaring her to be a recognized natural daughter of Santiago Benito Rijos y Correa, and to adjudge and decree that the defendants must proceed to make, in connection with the plaintiff, a liquidation of the inheritance of the said Don Santiago, and to deliver to her one fifth of the properties constituting the said inheritance, and the rents produced by the same since the death of Don Santiago Benito Rijos.

J. TEXIDOR.
DGO. M. MASSARI.

7 In the District Court for the Judicial District of San Juan, P. R.

No. 2464.

EMILIA RIJOS CÓRDOVA, Plaintiff,
vs.
TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y Rijos, Manuel Benito de Peñas, y Herminia Rijos Laza, Defendants.

Action Involving a Judicial Declaration of Natural Daughter, Liquidation of an Hereditary Share and the Delivery of an Interest in Real Properties and of the Proceeds of Fruits and Rents Thereof.

Demurrer to the Complaint.

Now comes the defendant in the above entitled case, Manuel Benito de Peña, by the undersigned attorney, and states:

That in opposition to the complaint he alleges the demurrer to the effect that the same does not state sufficient facts to constitute a cause of action, which demurrer is authorized by paragraph number 6 of Sect. 105 of the Code of Civil Procedure, and which demurrer is based on the following allegations:

It is stated in the 3rd fact of the complaint that Don Santiago Benito Rijos (who is deemed, in the said complaint, to be the father

of the plaintiff Emilia) died on the 29th of April, 1869, from which statement it necessarily follows as a conclusion that the
8 said Emilia was not born after the 29th of April, 1870, that is to say, after the lapse of three hundred days from the death of her alleged father.

Therefore, if the plaintiff Emilia was born on the 30th of April, 1870, she is to-day thirty eight years and a half old, and she reached her majority on the 30th of April, 1893, at which date the Spanish Civil Code was in force in Porto Rico, inasmuch as the same has been in force in this Island from the year 1890 up to the year 1902.

Section 137 of the Spanish Civil Code literally reads as follows:

"The actions for the acknowledgment of natural children can be instituted only during the life of the presumed parents, except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may institute the action before the expiration of the first four years of its majority.

2. If, after the death of the father or mother, some instrument, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be instituted within the six months following the discovery of such instrument."

If it is a positive fact that Santiago Benito Rijos died during the minority of the plaintiff Emilia, then it is imperative to apply the provisions of paragraph number 1, of the said section 137, in order to determine what rights the said plaintiff could have exercised, and these rights are no other than the exercise of an action for her recognition, brought before the lapse of the first four years from her majority.

Even supposing that she, the plaintiff herein, was born on the 30th of April, 1870, (which is the must unfavorable date for the defendants' contentions), it follows that she attained her majority on the same day, the 30th of April, in the year 1893, and such being the case, it is evident that on the 30th of April, 1897, her action was fully and definitely extinguished.

9 As the said action for the recognition of natural daughter was not brought by the plaintiff Emilia, or, at least, it is not stated in the complaint that it was ever brought, it is evident that from the face of the complaint itself it appears that the action brought therein is barred by the Statute of Limitations, that a dead right is therein exercised, and that a fully and definitely extinguished claim is made therein.

The absolute want of facts, in the complaint, to constitute a cause of action in this suit, is still made more apparent by an examination of the allegations made by the plaintiff in the 10th fact of the complaint, wherein the following language is used: "Ever since the plaintiff became of age, she has not failed to make efforts, extrajudicially, with regard to the defendants, and, formerly, as to their ancestors, so as to obtain the interests belonging to her in the inheritance of Don Santiago Benito, and to obtain her recognition as daughter of the latter, though in the character of legitimate daugh-

ter * * *," from which words it plainly and evidently follows that she never made any efforts, nor brought any action whatsoever, for her recognition as natural daughter, which is the object of this suit, but to obtain her recogniton as legitimate daughter of Santiago Benito Rijos and Emilia Córdova.

It is not necessary to add here that the provisions of the said Spanish Civil Code with regard to the action to claim legitimate filiation greatly differ from those which govern natural filiation, the latter being governed by section 137 above cited, while the legitimate filiation is governed by the provisions of Sect. 118 of the same legal body.

If disregarding the provisions of the Spanish Civil Code, we refer to the Civil Code promulgated to be in force in Porto Rico on the 1st of July, 1902, our demurrer to the effect that the complaint does not state facts to constitute a cause of action, and that the action brought therein is barred, is strengthened by the fact that Sect. 199 of the said Code provides that an action to claim filiation may be brought at any time within two years after the child shall become of age, which certainly is not the case of the plaintiff herein, who is older than 38 years, as above stated.

By virtue of the foregoing I pray the court to consider the demurrer alleged herein, and, at the proper time, to sustain the same, imposing the costs upon the plaintiff.

San Juan, P. R., October 15, 1908.

WENCESLAO BOSCH,
Attorney for Manuel Benito de Peña.

In the District Court for the Judicial District of San Juan, P. R.

No. 2464.

EMILIA RIJOS CÓRDOVA, Plaintiff,

vs.

TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y Rijos, Manuel B. de Peña y Herminia Rijos Laza, Defendants.

Action Involving a Declaration of Natural Daughter and Delivery of Inheritance, Together with the Proceeds of Fruits and Rents Thereof.

Judgment.

This case came on to be heard on the 14th of December, 1908, in open Court, on demurrer filed to the complaint to the effect that the same does not state a cause of action, on the ground that the action brought therein is barred, and both parties appeared by their counsel, who argued the case by a written brief filed in support of their respective claims, the question being thus submitted for decision.

And the Court, after proper consideration of the said pleadings and arguments of counsel, holds that the law is in favor of the demurrer, and therefore dismiss- the complaint of the said Emilia Rijos Córdova, without leave to amend the same, and with
12 costs. The Secretary shall issue the proper writ of execution. Rendered in open court on the 18th day of September, 1909, and entered on the 21st of the same month and year.

PEDRO DE ALDREY, *Judge.*

Attest:

A. MARIN MARIEN, *Secretary.*

13 ISLAND OF PORTO RICO,
Judicial District of San Juan:

In the District Court.

No. —.

EMILIA RIJOS CÓRDOVA, Plaintiff,
vs.
MANUEL BENITO DE PEÑA et al., Defendants.

Action Involving a Judicial Declaration of the Status of Natural Daughter and Other Petitions.

Notice of Appeal.

The Secretary of the District Court of San Juan, P. R.:

You are hereby notified that the plaintiff in the above entitled case takes an appeal to the Supreme Court of Porto Rico from the order which, in the nature of a judgment, was made by this court under date of the 18th of September, 1909, determining the demurrer filed to the complaint. And this appeal is taken from the whole of said order.

The attorney for the defendant has been notified with regard to this appeal.

San Juan, P. R., October 15th, 1909.

J. TEXIDOR,
Counsel for the Plaintiff.

Service of the foregoing notice of appeal accepted on this
14 15th day of October, 1909.

WENCESLAO BOSCH,
Counsel for Defendant.

Filed—Secretary's Office—Oct. 18th, 1909.—A. Marín Marien, Secretary.

I, Jacinto Texidor, counsel for Emilia Rijos in the above entitled case, hereby certifies that the above and foregoing is a faithful transcript of the record in the case.

San Juan, October 30th, 1909.

J. TEXIDOR.

15 In the Supreme Court of Porto Rico.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff & Appellant,
vs.
TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y Rijos, Manuel Benito de Peña y Herminia Rijos Laza, Defendants & Respondents.

Appeal from the District Court for the Judicial District of San Juan.

Opinion of the Court, Delivered by Associate Justice del Toro.

SAN JUAN, P. R., *June 21st*, 1910.

The plaintiff and appellant, Emilia Rijos Córdova, filed a complaint in the District Court of San Juan against Teresa Folgueras et al., involving a judicial declaration of the status of natural daughter, etc. The defendants alleged that it appeared from the face of the complaint itself that the action brought therein was barred under the law cited by them, and the court, on the 18th of September, 1909, rendered judgment, dismissing the complaint, without leave to amend the same, and with costs against the plaintiff, which judgment was properly entered on the 21st of September, 1909, and from that judgment the present appeal has been taken.

16 Indeed, it appears from the complaint itself that when the same was filed, the plaintiff therein was, at least, thirty eight years old, because, though the date of the plaintiff's birth is not given therein, the said complaint states that the father of the plaintiff died on the 29th of April, 1869.

Such being the case, and inasmuch as it does not appear that the plaintiff had been recognized by her father in a solemn and authentic manner, nor that an action of filiation had been brought by her at any time before the institution of this suit, it is plainly evident that her right, if she ever had any, to obtain a judicial declaration involving her recognition as natural daughter, was prescribed by force of law, at the time when the complaint was filed.

"The right to execute for a personal obligation shall prescribe after the lapse of ten years; and a personal action, and the right to obtain an execution based thereon, shall prescribe after twenty years, and not less: but where the obligation is secured by a mortgage, or where the obligation is mixed, or both, personal and real, the debt shall prescribe after thirty years and not less: the above shall be observed notwithstanding the law of the King Don Alfonso, our progenitor, which provided that a personal action should prescribe after ten years. (Law 6. Tit. 15, Book 4. R.)"—Law V., Tit. VIII., Book XI., Nov. Recop., that is to say, the Law 63 of Toro.

"The actions for the acknowledgment of natural children can be instituted only during the life of the presumed parents, except in the following cases:

1. If the father or mother died during the minority of the child, in which case the latter may institute the action before the expiration of the first four years of its majority.

17 2. If after the death of the father or mother, some instrument, before unknown, should be discovered in which the child is expressly acknowledged.

In this case the action must be instituted within the six months following the discovery of such instrument."—Section 137 of the Spanish Civil Code of 1888 made applicable to Porto Rico in 1889.

"Actions and rights arising before this Code became operative, and not exercised, shall continue with the extension and according to the terms recognized by prior legislation, but shall be subject, with regard to the exercise, duration, and proceedings for enforcing them, to the provisions of this Code * * *"—4th Transitory Provision of the said Civil Code.

"An action to claim filiation may be filed at any time within two years after the child shall become of age, and it shall be transmitted to his heirs, if he should die during his minority, or in a state of lunacy. In these cases heirs shall have five years during which to enter an action." Sec. 199 of the Revised Civil Code in force in Porto Rico from 1902.

The 4th Transitory Provision of the revised Civil Code is the same as the 4th Transitory Provision of the Old Civil Code.

"Prescription, which began to run before the publication of this Code, shall be governed by the prior laws; but if, after this Code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required." Sec. 1840 of the Revised Civil Code.

The presiding Justice of this Supreme Court, in the case of Gual vs. Gual, in construing the 4th Transitory Provision of the

18 Old Civil Code, which, as we have stated is the same as the 4th Transitory Provision of the Revised Civil Code, in delivering the opinion of the Court, used the following language:

"The right of the plaintiffs, Luis and Alfonso, to be recognized as natural children, having arisen before the Spanish Civil Code went into effect, and consequently the action to obtain the declaration of said right having so arisen, both right and action should continue with the extension and according to the terms recognized by prior legislation, but the said right and action cannot have a longer duration than that provided by the Code."

"The words extension and terms involve an entirely different meaning from that of the word duration, because the first two words determine the extent and virtue of a right or action, and the latter word refers to the time for which they shall have force and effect. There is no conflict or inconsistency in the provisions of the 4th Provision transcribed above. If any doubt might arise as to their meaning and import, the same will be vanished by a reference to the statement of motives which gave rise to the Spanish Civil Code, wherein the following is found: "But if it is proper to pay due respect to rights acquired under prior legislation, though not exer-

cised, no consideration of justice requires that the subsequent exercise thereof, as well as their duration and the proceedings for enforcing them should be exempted from the provisions of the Code."

In the case of Arnsterdam vs. Puente, decided on the 17th of June, 1910, Mr. Justice Wolf, in delivering the opinion of the Court, said:

"We think it is a fair deduction from the provisions of the Civil Code, heretofore in existence, as well as the practice and
19 jurisprudence in this regard that, without some authentic act which reveals the will of the father to give the child a status, the child has only a right of action to compel the father to confer such status. Section 135 of the Spanish Civil Code and section 189 of the Portorican Civil Code provide for the cases when a father is compelled to acknowledge his illegitimate child. He can be compelled by an action and the necessity for such action can only be said to be dispensed with when there is some solemn acts on the part of the father which show that this obligation has already been performed. It is the plain inference from these sections that although a father may have done, as in the case before us, any number of acts to show that a particular person was his child, yet he cannot be said to have acknowledged him according to the legal use of the word "acknowledgment." If he may be compelled, then, before such compulsion, the desideratum has not been attained. Until there is some solemn act or some declaration on the part of a court a child cannot be said to have acquired the civil status of an acknowledged natural child."

See also the opinion of this Court in the case of Puente vs. Puente, decided on the 18th of June, 1910.

The Supreme Court of the United States, said:

"This Court has often decided that statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. Hawkins v. Barney, 5 Pet. 451; Jackson v. Lamphire, 3 id. 280; Sohn v. Waterson, 17 Wall. 596; Christmas v. Russell, 5 id. 290; Sturges v. Crowninshield, 4 Wheat. 122. It is difficult to see why, if the legislature may prescribe a limitation where none existed before, it may not change one which has already been established." Terry v. Anderson, 95 U. S. 632.

20 Even accepting, with regard to the case at bar, that the plaintiff could have exercised the action of filiation at the time of the promulgation of the Revised Civil Code, and that the term allowed in Section 199 could be favorably applied to her, her action would still be barred, because the plaintiff allowed the said term to expire with excess without claiming the recognition of her right.

The legitimate child derives its status as such from the marriage of its parents. In order that marriage should be considered as contracted, it is not sufficient the intention of a man and a woman to contract the same, it is not sufficient for them to live together and to have begotten children; but it is necessary that the act should

be made in one of the solemn forms authorized by law, and that a solemn and authentic record thereof be taken.

The natural child derives its right as such from the recognition and in order that the recognition should be considered as made, and have legal effect, it is necessary that the same be made by the father in a solemn manner, with a firm will to make the same, and that a solemn and authentic record thereof be made.

When, under the Laws of Toro, a father executed some acts tending to establish his paternity, which acts, taken by themselves, did not constitute a solemn recognition, and of which no solemn and authentic record was made; when the cases provided for by section 137 of the Old Civil Code, occurred; and when those provided for by section 189 of the Revised Civil Code, now in force, arise, then the action of filiation should, and must, be brought, and the recognition should, and must, be made to appear by the solemn declaration of a competent court.

21 Parents who, in the fulfillment of their duties, should desire to transmit to their natural children their names and properties, or so much thereof as may belong to them, must make the recognition appear in a solemn and authentic manner, as, for instance, in the entry of birth, or in a public document, or in their will, or in a declaration made in solemn manner before an officer or court, etc., so that the recognized natural child may show its status as such, in the same manner as the legitimate child.

When parents do not make the recognition of their natural children in the manner above stated, then the children should bring the action of filiation and obtain a judicial declaration of their right.

If both, parents and children, were negligent, then they should be made to suffer the consequences of their acts and should blame themselves, and not the law which governed these questions of such a social transcendental importance in a uniform manner and for the good of all.

The appeal should be dismissed and the judgment affirmed.

EMILIO DEL TORO,
Associate Justice.

22 In the Supreme Court of Porto Rico.

Appeal from the District Court for the Judicial District of San Juan.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff & Appellant,

vs.

TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y RIJOS, Manuel Benito de Peña y Herminia Rijos Laza, Defendants & Respondents.

Judgment.

SAN JUAN, P. R., *June 21st*, 1910.

This Court has carefully examined the transcript of record in this case, and considered the brief and arguments of the parties

herein, and for the reasons stated in the opinion filed herewith, decides to dismiss, as it does dismiss, the appeal taken herein and to affirm, as it does affirm, the judgment appealed from, which was rendered by the District Court of San Juan on the 18th of September, 1909.

And it is hereby ordered that a certified copy of this judgment and of the opinion on which the same is based, be transmitted to the District Court of San Juan for the proper effects.

Thus we command, pronounce and sign.

JOSÉ C. HERNANDEZ. J. H. MACLEARY.
ADOLPH G. WOLF. EMILIO DEL TORO.

23 In the Supreme Court of Porto Rico.

To Establish the Character of Natural Daughter of the Plaintiff; and Other Relief.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff-Appellant,
vs.
MANUEL BENITO DE PEÑA et al., Defendants-Respondents.

To the Supreme Court of Porto Rico and the Attorneys for the Defendants:

Please take notice, that the plaintiff in the above-entitled action hereby appeals to the Supreme Court of the United States, Washington, D. C., from the judgment therein made and entered in the said Supreme Court of Pto. Rico, on the 21 of June, 1910, in favor of said defendants, and against said plaintiff, and from the whole of said judgment. This appeal is taken on question of law.

San Juan, P. R., June 30, 1910.

ED. CAUTIÑO,
Attorney for Appellant.

Notified with copy, this — of July, 1910.

BOSCH & SOTO,
Attorneys for the Defendants Respondents.

24 In the Supreme Court of Porto Rico.

Appeal from the District Court for the Judicial District of San Juan.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff & Appellant,

vs.

TERESA, JOSÉ, MARIANA, ENCARNACIÓN Y RAFAELA FOLGUERAS Y Rijos, Manuel Benito de Peña y Herminia Rijos Laza, Defendants & Respondents.

SAN JUAN, P. R., *July 5th*, 1910.

The appeal taken by counsel Don Eduardo Cautiño in behalf of the plaintiff and appellant Emilia Rijos, to the Supreme Court of the United States, from the judgment rendered by this Court on the 21st of June, 1910, in the above entitled case, is hereby allowed; the amount of the bond to be filed by the appellant Rijos to answer for the costs, is fixed in the sum of two hundred dollars, and the term of sixty days is allowed for the preparation and translation of the record to be transmitted to the Supreme Court of the United States.

It was ordered and signed by the Hon. James H. MacLeary, acting as Chief Justice of the Supreme Court.

Attest.

A. F. CASTRO, *Sec'y.*

25 In the Supreme Court of Porto Rico.

No. 470.

EMILIA RIJOS CÓRDOVA, Plaintiff & Appellant,

vs.

TERESA, JOSÉ, MARIANA, ENCARNACIÓN and RAFAELA FOLGUERAS y Rijos, Manuel Benito de Peña and Herminia Rijos Laza, Defendants and Appellees.

Appeal Bond.

Know all men by these presents that we, Emilia Rijos Córdova, as principal, and Fidel Guillermety and Robert H. Todd, as sureties, are held and firmly bound unto the said Teresa, José, Mariana, Encarnación and Rafaela Folgueras y Rijos, Manuel Benito de Peña and Herminia Rijos Laza, the appellees above named, in the penal sum of Two Hundred Dollars ($200.) to be paid to the appellees aforesaid, their executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 31st day of August, A. D. 1910.

26 Whereas lately at a session of the Supreme Court of Porto Rico in a suit pending in said court as above entitled a final decree was rendered against the said appellant, Emilia Rijos Córdova, and said appellant having obtained the allowance of an appeal from said decree and a citation directed to the appellees above named, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within sixty days from the date thereof;

Now, the condition of the above obligation is such, that if the said Emilia Rijos Córdova shall prosecute said appeal to effect and answer all costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

EMILIA RIJOS CÓRDOVA. [SEAL.]
F. GUILLERMETY. [SEAL.]
R. H. TODD. [SEAL.]

In presence of:

CARLOS GONZALEZ.
FELIX DIEZ.

Fidel Guillermety and Robert H. Todd, being by me duly sworn, depose and say, each for himself, that he pays taxes to the People of Porto Rico upon real property in said Island valued at more than the penal sum of the foregoing bond, and that he is worth in visible property more than said sum over and above all legal set offs.

F. GUILLERMETY.
R. H. TODD.

Sworn to and subscribed before me by F. Guillermety and R. H. Todd, each of whom is of full age, married, property-owner, and resident of San Juan, and with each of whom I certify to be personally acquainted.

Witness my hand and official seal this 1st day of August, A. D. 1910.

27 No. 134.

F. RAMIREZ DE ARELLANO,
Notary Public.

Approved on this 2nd day of September, 1910.

[SEAL.] EMILIO DEL TORO,
Associate Justice, Sup. Court of Porto Rico.

28 UNITED STATES OF AMERICA, ss:

The President of the United States to Teresa, José, Mariana, Encarnación and Rafaela Folgueras y Rijos, Manuel Benito de Peñas and Herminia Rijos Lara, and to Bosch & Soto, their Counsel:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, D. C., within sixty days from the date of this writ, pursuant to an appeal filed in the Office of the Secretary and Reporter of the Supreme Court of Porto Rico, in a certain cause lately pending in said court, wherein Emilia Rijos Córdova is plaintiff and appellant and you are defendants and respondents, to show cause, if any there be, why the judgment rendered therein against the said plaintiff and appellant should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Emilio del Toro, Associate Jutsice of the Supreme Court of Porto Rico, at the city of San Juan, P. R., this 18th day of August, in the year of our Lord, one thousand nine hundred and ten.

[Seal Supreme Court of Porto Rico, United States of America.]

EMILIO DEL TORO,
Associate Justice of the Supreme Court of Porto Rico.

Attest:

A. F. CASTRO,
Secretary and Reporter of the Supreme Court of Porto Rico.

BOSCH & SOTO,
Attorneys of Manuel Benito de Peña.

29 Received this writ this 18th day of Aug., 1910, and served the same by delivery a true copy thereof to Bosch & Soto the attorneys of Record for Benito de Peña this at San Juan, P. R. This 19th day of Aug., 1910, Teresa, José, Mariana, Encarnación and Rafaela Folgueras y Rijos and Herminia Rijos Lara not being found. This at San Juan, P. R., this 31 day of Aug., 1910.

S. C. BOTHWELL, *Marshal.*

30 Supreme Court of Porto Rico, Island of Porto Rico.

I, Antonio F. Castro, Secretary and Reporter of the Supreme Court of Porto Rico, do hereby certify: that the foregoing is a true copy, faithfully translated into the English language, of all papers filed, and proceedings had and entered in a certain cause lately pending in said court, wherein Emilia Rijos Córdova, is plaintiff and appellant, and Teresa, José, Mariana, Encarnación and Rafaela Folgueras y Rijos, Manuel Benito de Peña and Herminia Rijos

Laza are defendants and respondents; that I have compared the same with their respective originals, and they are true and faithful transcripts therefrom, and of the whole thereof.

In witness whereof, I hereunto set my hand, and affix the seal of said court, and an internal revenue stamp, for one dollar, properly cancelled, at the city of San Juan, Porto Rico, this 2nd day of September, in the year of our Lord one thousand nine hundred and ten.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,
Secretary and Reporter of the Supreme Court of Porto Rico.

[$1 revenue stamp, canceled.]

Endorsed on cover: File No. 22,327. Porto Rico Supreme Court. Term No. 141. Emilia Rijos Cordova, appellant, vs. Teresa Folgueras y Rijos et al. Filed September 30th, 1910. File No. 22,327.

(22,375)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 160.

DOMINGA ENRIQUETA DUMEY, APPELLANT,

vs.

ISABEL HERNANDEZ Y BELLO, NICOLAS MORELL Y HERNANDEZ, TOMAS MORELL Y HERNANDEZ, AND MARIA MORELL Y HERNANDEZ.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

INDEX.

	Original	Print
Caption	a	1
Bill of complaint	1	1
Exhibit—Partition of inheritance	11	7
Demurrer to bill	23	15
Order of submission, &c.	26	16
Opinion	27	17
Decree	28	18
Petition for appeal	29	18
Appeal bond	30	19
Assignment of errors	32	20
Order allowing appeal	33	20
Præcipe for transcript	34	21
Clerk's certificate	35	22
Citation and service	36	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 25, 1912.

a In the District Court of the United States for Porto Rico.

UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a District Court of the United States for the District of Porto Rico, begun and held at the Court House, in the City of San Juan, on the second Monday of April, being the Eleventh day of the same month, in the year of our Lord One Thousand Nine Hundred and Ten, Present, Honorable John J. Jenkins, Judge of the District Court of the United States for the District of Porto Rico:

Among other were the following proceedings, to wit:

No. 646. Equity.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

1 In the District Court of the United States for Porto Rico.

646. Equity.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Bill to Cancel Partition of Inheritance, etc.

Filed June 14, 1909.

To the Honorable Bernard S. Rodey, Judge of the District Court of the United States, in Chancery sitting, for the District of Porto Rico:

Dominga Enriqueta Dumey, complainant, brings this her bill of complaint against Ysabel Hernandez y Bello, widow of Damian Morell y Pons, deceased, and Nicolás Morell y Hernandez, Tomás Morell y Hernandez and Maria Morell y Hernandez, children of said Damian Morell y Pons and Ysabel Hernandez y Bello. And Thereupon your oratrix complains and says:

I.

That your oratrix is a citizen of Porto Rico, residing in the municipality of Lares, and that all the defendants are aliens and subjects of the King of Spain, the said defendants Ysabel Hernandez y Bello and Maria Morell y Hernandez being residents of the town of Soller, Island of Mallorca, the said defendant Tomás Morell y Hernandez being a resident of the City and State of New York, and the said defendant Nicolás Morell y Hernandez being a resident of the municipality of Lares aforesaid.

II.

That the said Damian Morell y Pons, who was born and died a loyal subject of the Spanish Crown and who was, as your oratrix hereinafter alleges and stands ready to prove, the father of your oratrix as well as of the three children above named as defendants, came to the then Province of Porto Rico to reside some time
2 previous to the Year of our Lord 1870 and took up his residence and entered into business in said municipality of Lares; that during or about the year 1872 said Damian Morell, being then unmarried, induced the mother of your oratrix, Catalina Dumey who was also unmarried, to enter into illicit relations with him and soon thereafter established her in a house in said town of Lares where they openly lived together and maintained carnal relations; and that, as a result of such relations a male child was born to them in the year 1873 or 1874 who died while yet very small, and thereafter in like manner your oratrix was born on the 4th day of August, 1875, in the house in which said Damian Morell and Catalina Dumey were living together as aforesaid and was the child of said Catalina Dumey by the said Damian Morell.

III.

That at the time of the birth of your oratrix the said Damian Morell recognized her as his child by making the ordinary and necessary provision for the care of her mother during and after childbirth, by paying all the expenses incurred at said birth, and thereafter by supporting and continuing to live with her said mother in the same relations as previously, and by admitting his paternity verbally and by daily acts inconsistent with any intention to deny the same; and that such course of action on the part of said Damian Morell continued for several years after the birth of your oratrix, he living with your oratrix' mother and treating your oratrix in all respects as a daughter and causing it to be so understood in the community, until shortly before the time of the events hereinafter described.

IV.

That from the said year 1872 until after the occur-ence of all the events hereinbefore set forth the said Damian Morell and the said Catalina Dumpey, mother of your oratrix, remained unmar-
3 ried and capable of contracting matrimony with each other; but that in the month of June, in the year 1880, the said Damian Morell, forgetful of his duty and obligation to your oratrix and her said mother, contracted matrimony with the defendant Ysabel Hernandez y Bello and thereafter had by her three children, Tomás, Nicolás, and Maria, who are the three other defendants above named; and that after his said marriage the relations theretofore existing between him and your oratrix' said mother ceased, but said Damian Morell nevertheless continued to contribute towards the support of your oratrix and her mother and to interest himself in your oratrix' welfare and never did any act to deny or nullify the effect of his previous recognition of your oratrix as his daughter; whereby

your oratrix acquired and became entitled to the status of natural recognized child of said Damian Morell, under and in accordance with the laws in force in that regard previous to the promulgation of the Civil Code.

V.

That after the birth of his said three children who are defendants herein, to wit: in the year 1889, said Damian Morell removed his place of residence from the island of Porto Rico to said Island of Mallorca, carrying with him his said legitimate family, the defendants herein, where they continued to reside up to the time of his death which occurred there on the 5th day of November, 1899, at which time his said three children hereinbe*be*fore named as defendants were all minors and had their legal place of residence with their said father; that thereafter only the defendant Nicolás Morell returned to Porto Rico to live, the other two children, Tomás and Maria, having continued to reside elsewhere.

VI.

That at the time of said departure of said Damian Morell for the Island of Mallorca to live in the year 1889 as aforesaid he was a member of a commercial firm doing business in said town of Lares under the firm name of Marques & Co.; that upon such de-
4 parture, being mindful to some extent of his duty toward your oratrix, he arranged with said firm to continue on his behalf the assistance and support which he had been furnishing to your oratrix and her mother and such assistance was so furnished by said firm from time to time until those in charge of said firm arbitrarily refused longer to furnish the same on account of their displeasure and disapproval of certain conduct of your oratrix; but your oratrix, upon information and belief, avers that such refusal never came to the knowledge of said Damian Morell up to the time of his death, and that he died in the belief that his orders touching the support and assistance of your oratrix and her mother were still being observed and obeye[4]

VII.

That after the death of said Damian Morell as aforesaid, to wit: on the 29th day of December, 1899, the defendants obtained, as your oratrix is informed and believes, from the Court of First Instance of Palma de Mallorca in said Island of Mallorca a declaration of heirship in their favor, based upon the allegation that said Damian Morell had died without leaving any last will and testament, declaring that said three children who are defendants were the only heirs at law of said Damian Morell, but that no proceedings for the declaration of heirship have ever been begun within the Island of Porto Rico; and that your oratrix had no knowledge until within a few months that said proceedings in said Island of Mallorca had taken place, the nature of the same being ex parte and not binding upon, or affecting the interest of, anyone "having a better right."

VIII.

That from the time of the death of said Damian Morell the interests of his estate in the Island of Porto Rico remained in charge of said commercial firm of Marquez & Co. until the return of defendant Nicolás Morell y Hernandez about the year 1901, since which time the latter has been in active management of said estate, but no step has ever been taken to administer the same judicially and no division of the same was made or attempted until the 8th day of April, 1908; that on the day last aforesaid a Notarial document called a "Particion de bienes hereditarios" (Partition of inherited property) was drawn up by the Notary of Lares, Mariano R. Acosta, and signed by the defendants herein or their representatives, the defendant Nicolas being the only party thereto present in person, defendant Ysabel Hernandez being represented by Juan Marquez y Marquez, defendant Maria Morell by Bartolomé Marquez y Colon, and said Tomás Marquez by his said brother Nicolás, wherein was recited the said death of Damian Morell, the proceedings for the declaration of heirship aforesaid, and the description of the different properties alleged to form the estate left by said Damian Morell at his death, and whereby the said widow, the defendant Ysabel Hernandez, in consideration of certain of the properties relinquished to her, ceded and renounced all her interest in or to any of the said properties described in said deed of partition, and the said defendant children proceeded to partition between them all the remaining property of the said estate; all of which will more fully appear from a certified copy of said deed of partition, which was drawn in the Spanish language, and a true and correct translation of the same into the English language, herewith filed as "Exhibit A" and prayed to be taken and considered as a part hereof to the same extent as if literally copied herein.

IX.

That the inventory constituting the description of the different properties enumerated in said deed of partition divided the same into ten groups, the first and third consisting of real and personal property in said Island of Mallorca and the remaining eight consisting of real and personal property in the Island of Porto Rico and within this judicial District of the agreed value of more than fifty thousand ($50,000) dollars, according to the assessment fixed in said deed of partition, the same consisting principally of plantations devoted to the cultivation of coffee, mortgages upon plantations of the same kind and the capital still retained in the said firm of Marquez & Company; but your oratrix alleges upon information and belief that the valuation given to many of said items of assets is ridiculously low and that other assets belonging to said estate at the time of the death of said Damian Morell have been since that time turned into cash and distributed among said defendants and are not mentioned in any way in said deed of partition, and that the real value of the estate left at his death by said Damian Morell far exceeded one hundred thousand dollars

and defendants should be required to render an accounting to your oratrix of all transactions affecting said estate during the time they have been in control and management of the same, including the rents and profits derived therefrom, so that the amount to which you- oratrix is entitled as an heir of her said father, Damian Morell, may be properly and legally ascertained and the same be set apart to her by a new partition and distribution of the property thereof, or be paid to her by the legitimate children who have already partitioned the same, as they may elect.

X.

That, by virtue of the facts and circumstances related in paragraphs two, three, four and six of this your oratrix' bill of complaint, your oratrix acquired and attained the status of a recognized natural child of said Damian Morell and continued to enjoy the same up to the time of his death; that the circumstances attending the birth of your oratrix and the recognition of her as his child by her said father as aforesaid was known to the defendants at and before the said time of his death; that such knowledge was one of the reasons inducing said defendants to obtain a declaration of heirship in the far away Island of Mallorca instead of in Porto Rico where by far the larger part of the property of said deceased was situate, to avoid any judicial administration of his said estate in the Island of Porto Rico and to delay for the term of more than eight years before taking any steps for the partition of said property.

7

XI.

That, by virtue of the premises, your oratrix is entitled under the laws of Porto Rico as existing at the time of the death of her said father to inherit as his recognized natural child and one of his heirs by force of law one half of the amount descending by the same law to each of his three legitimate children, the defendant herein, that is, to an undivided one-sixth interest therein; that the pretended deed of partition made by and between the said defendants on said 8th day of April, 1908, ignoring and omitting the known rights of your oratrix in the premises, is null and void as against your oratrix and should be so declared and ordered cancelled from the Registry of Property and that, pending this suit, a temporary injunction should be issued enjoining the three defendant heirs, Nicolás, Tomás and Maria from selling, mortgaging, pledging, or otherwise encumbering or disposing of any of the property in said deed of partition described or which belonged to said estate left by said Damian Morell; and that said defendant Nicolás Morell, who has been the heir in active charge and control of the assets of said estate since the death of his said father, as the representative of the other defendants, should be required to make and state to this court, or to such Master as may be by it appointed an account showing the total assets of said estate of said Damian Morell at the time of his death and of the disposition heretofore made of any part thereof as well as of the rents and profits derived therefrom from his said death until the execution of said deed of partition.

8 XII.

That said deed of partition hereinbefore mentioned has been duly recorded by said defendants in the proper Registry of Property as to the respective real estate of mortgages in the same described and belonging to the respective jurisdictions covered by each of said Registries; and that said deed of partition and its said recording constitute a cloud or burden upon the title of your oratrix to her said undivided one-sixth interest in the same which should be cancelled and removed by the decree of this honorable Court.

Forasmuch, therefore, as your oratrix is without remedy in the premises except in this court of equity, and to the end that the defendants may, if they can, show why your oratrix should not have the relief hereby prayed, and may to the best of their knowledge, information and belief full true and direct answer to this bill—but now under oath, the answer under oath being hereby expressly waived—; that your oratriz may be decreed by this court to be entitled, as the recognized natural child of said Damian Morell, deceased, to a one-sixth interest in the inheritance left by him, in accordance with the law in force at the time of his death; that the said deed of partition hereinbefore referred to, whereby the defendants attempted to distribute and settle said inheritance extrajudicially and ignoring the right of your oratriz to share therein, may be decreed to be null, void and of no effect as against the rights given by the law to your oratrix and the record of the same in the Registries of Property to be cancelled and stricken therefrom; that said defendants may be enjoined by the order and injunction of this court from selling, mortgaging, pledging, or otherwise encumbering or disposing of any of the property in said deed of partition described or which belonged to the estate left by said Damian Morell, deceased, during the pendency of this suit, and that the same may by its final decree be perpetuated so far as may be necessary for
9 the full protection of the rights of your oratrix; that the defendant Nicolás Morell may be required to make and state to this court an account showing the total assets of said estate at the time of the death of said Damian Morell and of the disposition heretofore made of any part thereof, as well as of the rents and profits derived therefrom from his said death until the execution of said deed of partition; that said defendants may be required to exercise their option whether to recognize the title of your oratrix to an undivided one-sixth interest in all the property left by said Damian Morell as aforesaid or to pay to her the value of said interest in money, and that, when such option is exercised, a decree may be entered as may be necessary to carry the same into effect; and that your oratrix may have such other and further relief as equity may require and to your Honor shall seem meet;

May it please your Honor to grant unto your oratrix a writ of subpœna in Chancery issued out of and under the seal of this honorable court, directed to the said defendants Ysabel Hernandez y Bello, Nicolás, Thomas and Maria Morell y Hernandez, commanding and enjoining them and each of them, on a day certain therein to be named and under a certain penalty therein to be expressed, to be

and appear before this honorable court and then and there full, true and direct answer make to this your oratrix' bill of complaint and to abide by such orders and decrees as this court may make in the premises.

And your oratrix will ever pray,

(Signed) R. H. TODD.
N. B. K. PETTINGILL,
Counsel for the Complainant.

ISLAND OF PORTO RICO,
City of Lares, ss:

Dominga Enriqueta Dumey, being by me first duly sworn, deposes and says, that she is the complainant described in the foregoing bill of complaint; that said document has been duly read to her, translated into the Spanish language, so that she knows the contents thereof; and that the allegations of fact therein contained are
10 true of her own knowledge or by information derived early in life from her mother, except those things alleged therein on information and belief, and those things she believes to be true.

(Signed) ENRIQUETA DUMEY.

Sworn to and subscribed before me, the undersigned authority, this 10 day of June, A. D. 1909.

No. 175.

[SEAL.] TOMAS BRYAN,
Municipal Judge.

11 In the District Court of the United States for Porto Rico.

Filed June 15, 1909.

In Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
NICOLAS MORRELL Y HERMANDEZ et al.

Translation.

Number Thirty.

Partition of Inheritance.

In the town of Lares, Island of Porto Rico, United States of America, on the eighth day of the month of April, nineteen hundred and eight, before me, Don Mariano R. Acosta Y Lassalle, a lawyer and Notary of Porto Rico, with residence in the City of Aguadilla and in the presence of the proper number of witnesses, there appeared;

Don Juan Marquez y Marques, of full age, married, merchant and a resident of Lares, in the capacity of attorney in fact of Doña Isabel

Hermandez y Bello, Porto Rican, of full age, widow of Don Damian Morell y Pons, who was a resident of Lares, and to-day resides in Soller, Island of Mallorca, Spain.

Don Bartolome Marquez y Colon, of full age, married, a merchant and resident of Lares, in the capacity of attorney in fact of Doña Maria Morell y Hermandez, Porto Rican, of full age, unmarried, without profession and now residing in Soller Island of Mallorca, Spain, and

Don Nicolas Morell y Hermandez, Porto Rican, of full age, married and joined by his wife Doña Amparo Rodriquez, likewise of full age, property owner and resident of Lares, acting in his own right and in the capacity of attorney in fact of his brother of the full blood Don Tomás Morell y Hermandez, Porto Rican, of full age un-married, clerk and resident in the City of New York.

12 *Representation.*

They prove it as follows: Don Juan Marquez with the power of attorney number 89 dated July 6th, 1907, executed in Soller, before the Notary Don Jaime Domengi y Mir, whose signature is seen to be legalized by the American Consul- Agent in Palma de Mallorca.

Don Bartolomé Marquez, by power of attorney number 416 dated December 7th, 1907, executed in Soller before the Notary, Don Pedro Alcover y Maspons, whose signature is seen to be legalized by the American Consul- Agent in Palma de Mallorca, and

Don Nicolás Morell by the power of attorney number 23, dated May 31, 1907, executed in the City of Ponce of this Island, before the Notary Don Luis L. Jordan Dávila, which power is ratified and amplified by the power executed in New York on September 27th, 1907, before the Notary Public Don Luis Castro Lopez, whose signature the Clerk of New York certifies.

All said powers have clauses authorizing the execution of this instrument. I certify my personal acquaintances with and the additional individual details of the parties appearing, who assure me that they possess the full enjoyment of their civil rights and the free control of their property, said attorneys in fact stating that their powers had not been revoked, suspended or limited in any way, the wife of Don Nicolas Morell, appearing for the purpose of giving her express consent which, although unnecessary on account of dealing with separate property, is given out of an abundance of caution; and having, in my judgment, the necessary legal capacity for the execution hereof, they freely and spontaneously state:

First. That Don Damian Morell y Pons, who was a resident of Lares died in Soller, Island of Mallorca, Province of Baleares, Spain, on the 5th of November, 1899, without having made any last will and testament, being married to Doña Isabel Hermandez y Bello,
from which marriage they had three children, Don Nicolas,
13 Don Tomas, and Doña Maria Morell y Hermandez, who were
declared his heirs abintesto by judgment of the Court of First Instance of Palma de Mallorca, on December 29th, 1899, issued

by Judge Manuel Perez, Porto Rico, before his Clerk Don Juan Bestard v Gie.

Second. That all the parties interested in the inheritance being of full age, and there being no debts against the estate of the deceased, they have agreed to make the partition out of court in this form, and for that purpose they draw up the present inventory:

1. Five Government Bonds (Láminas amortizables) twenty five thousand pesatas. Forty eight shares of the Bank of Soller, nine thousand six hundred pesetas, Cash in said Bank, ten thousand pesetas.

2. Account against Doña Emilia Hermandez, seven thousand and thirty-nine pesetas. Account against Don Miguel Morell Busquets, ten thousand five hundred eighty-nine pesos, twenty-two cents, provincial currency. Account against Don Miguel Morell, Three thousand sixty-four pesos, Spanish money.

3. House number 6 Pastor Street, in the town of Soller.

4. Farm, tract situated in the barrio of Buenos Aires, municipality of Lares, composed of three cuerdas sixty-eight hundredths, equivalent to ane hectar-a, forty-four areas and sixty-four centi-areas in coffee and pasture, bounded on the North by lands of Jose Delgado, Lorenzo Garcia and Serapio Feo, and also by a house in which Don Damian Morell had a half interest, On the East, bv lands of Isabel Hermandez, the neighborhood road running through the middle, on the South by lands of said Mrs. Hermandez and on the West by the highway which leads to Adjuntas, and a half of a wooden house roofed with galvanized iron with its lot which fronts on the road which leads from Lares to Adjuntas, and has one story, twenty-two yards in front by ten yards deep and is bounded on the front, which is the West, by said road from Adjuntas. On the left, which is North, by lands of Lorenzo Garcia, on the right, which is South, by the tract of land here described and that of Jose Delago

14 Don Damian Morell y Pons acquired this property and the half interest in the house by purchase from Doña Maria Isidora Delgao y Estevas by deed number 171 executed in Utuado, on March 16th, 1897, before the Notary Don Osvaldo Alfonso y Fuertes, recorded as to the land, at page 153 of book 32 of the municipality of Lares, property number 1879, first inscription.

5. Farm, piece of coffee land, situated in the barrio of Buenos Aires and Latorre, municipality of Lares, composed of 69 cuerdas, 75/100, of land, equivalent to 27 hectareas, 41 areas and 64 centiareas, cultivated in coffee, plantain and bushes, with its dwelling house, cook house, machinery for hauling coffee, reservoir and drying platforms, which is bounded on the North with lands of Succession of Evangelista Cuevas, and those of Jose Monrroy, on the East, by those of Hilarmo Barbosa and those of Felix Beltran, by a brook called 'del memorillo"; on the South, by the lands of said Beltran and the road which leads from Lares to Adjuntas, and on the West, by the same road, and the lands of Jose Monrroy, recorded at page 117, of book 12 of the municipality of Lares, property number 741, inscription 2d.

6. Farm, tract situated in the barrio of Latorre, municipality of

Lares, composed of Ten cuerdas, equivalent to 3 hectareas, 93 areas and 4 centiareas, cultivated in coffee and pasture, which is bounded on the North and East by lands of the Succession of Ricardo Cueto, on the South, by the brook called "de los platanos," and on the West, by lands of Jose Monroy, recorded on page 22 turned, of book 2 of the municipality of Lares, property number 82, inscription 4. Don Damian Morell y Pons acquired these two farms in a settlement of a part of his partnership assets in the mercantile firm of Marquez and Company, of Lares, of which he was the managing partner, remaining as a special partner (comanditario), according to the amended agreement of partnership number 121, dated
15 May 16th, is bounded on the East with the property of Dionisio Roldan and that of the Succession of Eusebio Perez, on the North by lands of the same Succession of Perez and those of Baustista Suarez and Ramon Berganso; on the West, by lands of Ramon Molina and those of said Berganso; and on the South, by the brook "Mameyes Aragon," recorded on page 172 turned of book 71 of Utuado, property 877, inscription 18.

Farm, tract situated in the barrio of Juyuya Arriba, municipality of Utuado, cultivated in coffee, plantain, pasture, bushes and trees, as well as houses, composed of 27 cuerdas, equivalent to 10 hectareas, 69 areas, and 21 centiareas, bounded with similar properties on the East by Juan Maria Rivera, on the West by José Roman, on the South, by Vidal Rivera, and on the North by the property last described, recorded on page 163 turned, of book 58 of Utuaro, property number 1023, inscription 13.

City property, house of wood covered with zinc, having no number, in the town of Adjuntas, which fronts on the plaza forming one corner of Comercio street; also steam machinery for hulling coffee together with the storehouse of wood covered with zinc in which it is located, and the water rights for said machinery, the whole being situated on a lot which fronts on said plaza of Adjuntas at the West end, and measures 20 meters, 62 Millimeters in front, on the right side entering, that is on the North 28 meters 3 millimeters bounding on Comercio street with which it makes a corner; on the left, that is the South, 28 meters 3 centimeters bounded by Jaime Miro and on the back that is, the East, bounded by Francisco Moll; it measures 17 meters, 545 millimeters which measurements form a superficial area of 504 square meters, 540 square millimeters, recorded on page 211, of book 58 of Adjuntas, property number 1091, inscription 12.

Farm, tract situated in the barrio of Tamana, municipality
16 of 1889, executed in Lares, before the Notary Victor Martinez.

7. Farm, tract situated in the barrio of Latorre, municipality of Lares, composed of 15 cuerdas of land more or less, equivalent to 4 hectareas, 89 areas, and is bounded on the East by lands of Esteban Paralitici and Jose Colon, on the West, by those of Damian Morell, on the North, by the neighborhood road which leads to the town of Lares; and on the South, by the brook "de los platanos," cultivated in coffee, plantains, pasture and bushes, recorded on page 146, of the book 18 of the municipality of Lares, property

number 1140, inscrittion 3. Don Damian Morell y Pons acquired this property by purchase from Francisco Segarra y Santiago by deed number 165 dated March 4th, 1896, executed in Lares before the Notary Victor Primo Martinez y Gonzalez.

8. Capital as special partner in the mercantile firm Marquez & Co., of Lares, invested by Don Damian Morell y Pons, by deed number 121 executed in Lares on May 16th, 1889, before the Notary Victor Martinez, extended by deed of March 25th, 1895, in said town of Lares before the same Notary Martinez, and modified by deed Number 83 of April 7th, 1903, executed in Lares before the Notary Salvador Picornell y Cardona, the capital of the special partner, that is the Succession of Don Damian Morell y Pons, being $9,336.17, recorded in the mercantile Registry on page 83 of book 22 of Partnerships, certificate number 1101, inscription 1st, which special capital amounts at present to $9,548.57.

9. A mortgage credit against Sobrinos de Castañer, an agriculture partnership, domiciled in the barrio of Portillo, municipality of Adjuntas, and which is a lien upon the following properties:

Farm, tract composed of 46 cuerdas more or less, equivalent to 18 hectareas, 7 areas, and 98 centiareas, in the barrio of Jayuya Arriba, place called Tallaboa, municipality of Utuado, containing houses, coffee trees, plaintains, pasture, bushes and trees, which Adjuntas, composed of 115 cuerdas, equivalent to— hectareas, 20
17 areas and 36 centiareas, cultivated in coffee, plantains, pasture, hills and bushes, containing a dwelling house; it is bounded on the East by lands of Jose Miro and Nicomedes del Rio; on the North by those of Jaime Sureda; on the West by those of Fidel Bermudez and those of Alfonso Castañer, and on the South by the river "Tamaña," recorded on page 227 turned, of book 53 of Adjuntas, property number 2460, inscription 4.

Farm, coffee plantation called Santa Ana, in the barrio of Portillo and Tanamá of Adjuntas, composed of 278 cuerdas of land more or less, equivalent to 119 hectareas, 26 areas, 52 centiareas, cultivated in coffee, plantians, and bananas, containing a dwelling house of wood with roof of zinc, a storehouse of wood and roof of zinc and another house of wood and roof of zinc which contains the machinery for hulling and polishing coffee, run by water power, bounding on the East by lands of Alfonso Castañer, on the West by those of Santa Irrizarri, those of José Morales, and those of said Castañer, on the North by lands of José Cortes, those of Juan Bautista Terry and those of Doña Trada Rodriquez, and an the South by those of Emilio Perez and those of Juan Plasa, recorded on page 156 turned of book 52 of Adjuntas, property number 2402, inscription 3.

Said properties are responsible in the following manner: the first for $600 of capital, $200 of interest and $100 for costs. The second for $400 capital, $150 of interest and $100 of costs.

The third for $1,500 of capital, $400 of interest and $400 of costs. The fourth, for $1,200 of capital, $450 of interest and $200 of costs: and the fifth for $1,277.44 of capital, $300 of interest, and $200 of costs.

This credit was evidenced by deed number 28 of September 12th,

1904, in Ponce before the Notary Gustavo Rodriquez, by Sobrinos de Castañer in favor of M. Morell & Co., for the amount of
18 $5,977.44 payable in six years and in six installments, that is in the proportion $996.24 on the 31st of March of the years 1906 to 1911 both inclusive, the debtor being obliged to pay as interest upon said sum stipulated at 12% annually the sum of $2,510.52 in the proportion and installments following: $77.29 on April 1st, 1905, $597.74 on the same day and month of 1906, $478.20 on the same day and month of 1907, $358.64 on the same day and month of 1908, $239.10 on the same day and month of 1909, and $119.55 on said 1st day of April 1910; which mortgage credit amounting, including principal and interest, to $8,487.96 was assigned by M. Morell & Co. to the minor children Don Nicolas, Don Tomas and Doña Maria Morell y Hermandez by deed number 29 in Ponce on the same date and before the same official as the deed by which it was evidenced and in that form it is found inscribed in the Registry of Property, but as the price of its purchase came from the assests left by Don Damian Morell y Pons it is states in this connection in order to be partitioned together with his other property. This credit according to the account submitted on February 15th, 1908, amounts to $6,804.94.

10. A mortgage credit against Don Antonio Collazo y Ortiz which is a lien upon the following properties:

Farm, tract situated in the Barrio de Latorre, municipality of Lares, composed of 96 cuerdas, 75/100 more or less, equivalent to 38 hectareas, 2 areas and 65 centiareas, cultivated in coffee, pasture and bushes, containing a dwelling house of one story, made of wood and roofed of galvanized iron, another of the same materials containing the machinery for hulling coffee, a small cane mill in bad condition, and a platform for drying coffee and it is bounded on the North by lands of Antonio Collazo y Ortiz formally belonging to Maria de la Paz Velez, on the East by those of Maria Isidra Velez, on the South by the river Blanco and lands of Pedro Rega-
19 lado Gonzalez formerly belonging to Isidoro Velez y Velez and on the West by lands of Silverio Vera. Recorded on page 90 of book 20 of Lares, property number 196 inscription 7.

This credit was evidenced by deed number 100 dated July 9. I mean February 1895, in Lares before the Notary Victor Martinez, by Antonio Collazo y Ortiz in favor of Don Damian Morell y Pons for the amount of $12,000 pesos of the money then in currency with interest at 9% per annum, payable in the following form: in the month of February of the years 1896 to 1899 inclusive he will pay the interest at the end of each year; in the same month of 1900 he will pay $6,000 pesos of the deb. with the interest accrued for the amount remaining unpaid, and an equal amount in the same month of 1901 with the interest corresponding to the amount remaining unpaid. This credit, according to the accounts submitted in February 1908, amounts to $6,789.62.

Third. Doña Isabel Hermandez y Bello renounces in favor of her children the ganancial rights which might belong to her in assets inventoried, agreeing to what shall be adjudicated to her hereinafter, and by virtue of this renunciation and inasmuch as the division

which is being made is only of the property belonging to Don Damian Morell, her three children here appearing or represented renounce on their part in favor of their mother Doña Isabel the gananciał rights which might belong to them in the property acquired by the latter, wherefore and by virtue of this clause all the property acquired by Doña Isabel Hermandez, even by purchase and during her marriage shall be considered as her exclusive property and for that reason expressly they are omitted from this instrument.

Fourth. Therefore, by common consent the distribution of the inheritance is made in the following form:

To the widow Doña Isabel Hermandez Bello is adjudicated: The full dominion of the rustic*t* tract of the three cuerdas sixty-
20 eight hundredths in the barrio of Buenos Aries of Lares, described under number 4 and which is valued at $114.60; the full dominion of the half of the house and lot also described under number 4 of the inventory, which is valued at $185.40; the usufruct of the house in Pastor street number 6, in the town of Soller, under number 3 of the inventory, during her life and while preserving her condition of widowhood. The naked title of this house is adjudicated two thirds part to Doña Maria and one third part to Don Tomas Morell.

To Don Nicolas Morell y Hermandez is adjudicated: The farm in the barrios of Buenos Aries and Latorre of Lares containing 69 cuerdas 75/100 with buildings described under number 5 of the inventory, valued at $2,058; the rustic tract in the barrio of Latorre of Lares containing 10 cuerdas described under number 6 of the inventory, valued at $440; the rustic tract in the barrio of Latorre of Lares, containing 15 cuerdas, described under number 7 of the inventory, valued at $660; in cash received before the execution of this instrument, $13,195.51. Total $16,353.51.

To Don Tomas Morell y Hermandez is adjudicated: The capital of the special partnership in the mercantile house of Marquez & Co. of Lares, under number 8 of the inventory, amounting to $9,548.57; the mortgage credit against Sobrinos de Castañer and which is a lien upon the five properties described under number 9 of the inventory, amounting according to the liquidation of February 15th, 1908, to $6,804.94. Total $16,353.51. There is adjudicated to him in addition an undivided coownership of a one third part in the naked title of the house number 6 Pastor street in the town of Soller.

To Doña Maria Morell y Hermandez is adjudicated: The five government bonds, the forty-eight shares in the Bank of Soller, and the cash in said Bank, referred to under number 1 of the inventory, valued at $6,670; the mortgage credit against Don Antonio Collazo y Ortiz and which is a lien upon the property described under
21 number 10 of the inventory, amounting, according to the accounts submitted in February 1908, to $6,789.62; in cash received before the execution of this instrument $2,893.89. Total $16,353.51. There is adjudicated to her in addition an undivided co-ownership of two thirds part in the naked title of the house number 6 Pastor street in the town of Soller of which the usufruct belongs to Doña Isabel Hermandez.

Observations.

The credit against Don Emilio Hermandez and the two credits against Don Miguel Morell referred to under number 11 of the inventory, remain undivided, but as fast as their proceeds are liquidated the same will be divided in equal parts, among the three heirs.

The cash to the amount of $16,089.40 which has been divided between Don Nicolas and Doña Maria Morell is the proceeds of the profits or surplus of the inheritance accumulated since the death of the ancesstor and which was omitted from the inventory.

Anyone of the co-owners of the house in Pastor street, in the town of Soller, are hereby authorized to describe and appraise said property by means of a Notarial act in accordance with the laws in force in Spain in order to obtain its inscription in that Registry of Property according to the division and form which is shown in this document, causing it to appear that to Doña Maria Morell has been assigned the two thirds part on account of her brother Don Nicolas having previously renounced in her favor the third part which would have belonged to him.

The brothers and sister Morell having already arrived at full age, approve all the acts of control and administration done by their mother during their minority.

22 The properties divided are free of every kind of liens and encumbrances and their taxes paid and the heirs are already in the p ssession and enjoyment of what has been adjudicated to them.

If other property should appear it will be distributed in equal parts among the three heirs.

Warnings.

I the Notary make the following: That taxes constitute a preferred lien; that the admition of the receipt of an amount of money is final although afterwards it may prove to be incorrect in whole or in part; that this deed ought to be inscribed in the Registry of Property for the purposes of the Mortgage Law.

It was so stated and executed, Don Gabriel Pons and Don Francisco Bujosa, resident of Lares, being witnesses. And they being informed of the right which the law gives them to read this document for themselves, I proceed with their consent to read it in its entirety, the contents of which they ratified and signed together with the witnesses. Of all of which and of the acquaintance with said witnesses, who assured me that there was no legal obstacle for their being such, I the Notary certify: Signed, Juan Marquez, Bme. Marquez, with the following signatures: Nicolas Morell, Amparo Rodriquez, Gabriel Pons, Franco. Bujosa. Signed and rubris: Mariano R. Acosta. There is an Internal Revenue Stamp of the value of one dollar cancelled by that of the Notary's office.

The foregoing is a copy true to its original of which I certify and at the petition of Robert H. Todd, Esq., I issue it consisting of this

sheet and eight others of the same kind attaching hereto the corresponding Revenue stamp, in Aguadilla on the 1st of June, 1909.
(Signed.) MARIANO R. ACOSTA.

(A fifty cents Revenue stamp cancelled by the seal of the Notary.)

23 In the United States District Court for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY, Complainant,
vs.
ISABEL HERNANDEZ Y BELLO et al.

Demurrer and Plea Thereto.

Filed March 21, 1910.

To the Honorable B. S. Rodey, Judge of the United States District Court for Porto Rico:

The demurrer and plea of the above named defendants to the bill of complaint of the above named plaintiff:

First. The said defendants, by protestation not confessing or acknowledging all or any of the matters in the said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, jointly demur to the said bill, and for causes of demurrer show:

I.

That the said plaintiff has not, as appears by his said bill, made out any title to the relief thereby prayed.

II.

That it appears by the said bill that the said plaintiff has an adequate remedy at law.

III.

That it appears by the said bill that there are divers other persons who are necessary parties to the said bill who are not made parties thereto.

IV.

That it appears by the said bill that the plaintiff herein, the said Enriqueta Dumey, was born on the 4th day of August, 1875, having reached her majority in the year 1898; and having elapsed more than two years since the said plaintiff became of age, the action herein is barred according to the terms of the Civil Code of
24 Porto Rico, sec. 199.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, said defendants pray the judgment of this honorable Court whether they shall be compelled to make any answer to said bill.

Second. And the said defendants, not waiving their said several demurrers, but wholly relying thereon, do plead thereto and for plea say:

That some of the defendants, Maria Morell Hernandez, Tomas Morell Hernandez and Nicolas Morell Hernandez, are not and never have been aliens as alleged in said bill as they are and always have been natives and citizens of Porto Rico.

All of which matters and things these defendants aver to be true, and do plead the same in bar to the whole of the said bill, and these defendants humbly pray the judgment of this Court, whether they ought to be compelled to make any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

(Signed) LOPEZ, TORD & CANALES,
Attorneys for Defendants.

We hereby certify that the foregoing demurrer and plea are in our opinion well founded in point of law.

(Signed) LOPEZ, TORD & CANALES,
Attorneys for Defendants.

ISLAND OF PORTO RICO,
City of Ponce:

Nicolas Morell Hernandez, being first duly sworn, deposes and says: I am one of the defendants in the above entitled action. The foregoing plea is true in point of fact and neither the plea nor the foregoing demurrer are interposed for delay.

(Signed) NICOLAS MORELL HERNANDEZ.

25 No. 161.

Subscribed and sworn to before me by Nicolas Morell y Hernandez, married, of age, and a resident of Lares, Porto Rico, and to me personally known.

Ponce, March 19th, 1910.

(Signed) N. R. CANALES, [SEAL.]
Notary Public.

26 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Journal Entry of July 7, 1910.

This matter is before the court for hearing on the demurrer to the complaint; Nemesio Canales appearing in support of the demurrer and Messrs. Pettingill and Todd against the same. And it

appearing that a plea has also been filed in the cause, counsel for the complainants contend that the demurrer is thereby waived. And the court having heard the arguments of counsel in that regard, sustains the contention of counsel for the complainants and rules that the filing of the plea does in fact waive the demurrer. Thereupon counsel for the respondents request leave to withdraw the plea, and counsel for complainants not objecting, he is permitted to withdraw the same. The hearing on the demurrer is thereupon proceeded with and at the conclusion of the arguments the matter is taken under advisement with leave to counsel to file briefs in the premises. The respondents to have fifteen days time and the complainants five days thereafter in which to file their briefs, each side to submit copies of same to the opposite party.

27 In the District Court of the United States for Porto Rico.

No. 646. Equity.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Opinion of Court.

Filed July 23, 1910.

The Supreme Court of Porto Rico has decided that the right of the plaintiff to maintain this action has been barred by the prescription fixed by the code. It will make no difference whether the object of the action be for the acknowledgment of a natural child or an action to claim filiation or the interest of the complainant in the property of her deceased father. No chance is left for argument. Every argument that can be made for the complainant in this case was ruled against her by the Supreme Court of Porto Rico. By the law of Porto Rico the right of the complainant is barred by the statute. The interpretation given to the law of limitation by the Supreme Court of Spain cannot control as the law of Congress requires this court to adopt as its rule of decision, the laws of the Island of Porto — except when the constitution, treaties, or statutes of the United States otherwise require or provide. The laws of Porto Rico are the laws as construed and applied by the courts of Porto Rico. There is no principle of the federal constitution or of any federal law or of general commercial law involved in this case. Therefore this court is bound to follow the latest decisions of the Supreme Court of Porto Rico. Justo Amsterdam et al. v. Felix Puente y Solana, Opinion by Mr. Justice Wolff, June 17, 1910. Rijos Cordova v. Rijos, Opinion by Mr. Justice Toro, June 21, 1910.

The Clerk will please notify the attorneys for the respective parties as early as convenient so that an appropriate order covering the views herein expressed may be drawn.

July 23, 1910.

(Signed) JOHN J. JENKINS, *Judge.*

3—160

28 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Order Dismissing Suit.

Filed July 28, 1910.

This cause came on to be heard upon respondent's demurrer to the bill on file herein, and the court, after hearing the argument and brief of respective counsel, and being sufficiently advised in the premises, sustains that part of said demurrer wherein the statute of limitations as construed by the Supreme Court of Porto Rico is set up as a bar to the present action, and consequently doth now

Order, adjudge, and decree, that this suit be, and the same is hereby dismissed and it is further ordered, adjudged and decreed that the said respondents have and recover from the said complainants their costs, incurred in this suit and amounting to — dollars.

(Signed) JOHN J. JENKINS, *Judge.*

July 28, 1910.

29 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Petition for Appeal.

Filed September 24, 1910.

The complainant in the above entitled cause, Dominga Enriqueta Dumey, conceiving herself aggrieved by the order and decree made and entered by this court in the above entitled cause under date of the 28th day of July, A. D. 1910, wherein and whereby, among other things, it was and is ordered and directed that the bill of complaint be finally dismissed, do hereby appeal from said final order and decree to the Supreme Court of the United States for the reasons to be set forth in an assignment of errors to be filed herein; and she prays that this her petition for her said appeal may be allowed, and that a transcript of the record, proceedings and findings upon

which said final decree was based, duly authenticated, may be sent to said Supreme Court of the United States.

Dated at San Juan, Porto Rico, this 3rd day of September, 1910.

(Signed) N. B. K. PETTINGILL,
R. H. TODD,
Solicitors for Complainant.

30 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Appeal Bond.

Filed Sept. 24, 1910.

Know all men by these presents that we, Robert H. Todd, as attorney for the complainant in the above suit, as principal, and Salvador Suan and Pedro de Elzaburn, as sureties, are held and firmly bound unto Isabel Hernandez y Bello, Nicolas Morell y Hernandez, Tomas Morell y Hernandez y Maria Morell y Hernandez, defendants in said suit, in the full and just sum of Two Hundred and Fifty Dollars ($250), for the payment whereof well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of September, A. D., 1910.

Whereas lately at a session of said District Court of the United States for Porto Rico in the above entitled and numbered suit, the said complainant having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the final decree therein whereby the bill of complaint was dismissed, which appeal has been allowed and entered in open court, during a stated Term of the same;

Now the condition of the above obligation is such that, if the said complainant in the above entitled and numbered suit shall prosecute their said appeal to effect, and shall answer for all costs that may be awarded against her, if she fails to make her plea
31 good, then the above obligation is to be void, otherwise to remain in full force and virtue.

(Signed) R. H. TODD. [SEAL.]
SALVADOR SUAN. [SEAL.]
PEDRO DE ESZABURN. [SEAL.]

UNITED STATES OF AMERICA,
District of Porto Rico:

Salvador Suan and Pedro de Elzaburn, being first duly sworn, each for himself deposes and says that he is one of the parties who

signed as a surety to the above bond, and that he is worth in visible property within the District subject to levy under execution, more than the said penal sum of Two Hundred and Fifty Dollars.

(Signed) SALVADOR SUAN.
[SEAL.] PEDRO DE ELZABURN.

Sworn to and subscribed before me this 24th day of September, 1910.

(Signed) JOHN L. GAY, *Clerk.*

Taken and approved by me, at San Juan, Porto Rico, this 24th day of September, 1910.

(Signed) JOHN J. JENKINS, *Judge.*

32 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Assignment of Errors.

Filed Sept. 24, 1910.

Comes now the complainant in the above entitled and numbered suit, now appellant, by her counsel, N. B. K. Pettingill and R. H. Todd, and assigns the following as error committed by the court below during the progress of said cause:

I.

The court erred in dismissing complainant's bill of complaint.

Wherefore appellant prays the Honorable, the Supreme Court of the United States, to examine and correct the error assigned, and for the reversal of said final decree herein.

(Signed) N. B. K. PETTINGILL,
R. H. TODD,
Counsel for Appellant.

33 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Order Allowing Appeal, etc.

The plaintiff, Dominga Enriqueta Dumey, by her counsel having on the 24th day of September, 1910, filed her petition of appeal in

this cause, it is now hereby ordered that an appeal to the Supreme Court of the United States from the order made and entered herein on July 28th, 1910, be, and the same hereby is, allowed to said plaintiff; and that a certified transcript of the record and all proceedings herein upon which said order was made be transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of Two Hundred and Fifty Dollars ($250.00), conditioned for the payment of costs as provided by law; and a bond in the above amount having been duly executed in this cause, and, being now presented, is duly examined and approved.

Dated at San Juan, Porto Rico, this 24th day of September, 1910.

(Signed) JOHN J. JENKINS, *Judge.*

34 In the District Court of the United States for Porto Rico.

No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

Præcipe for Transcript.

In making up the Transcript of the record for the Supreme Court of the United States upon the appeal taken herein by the complainant, the Clerk of the court aforesaid will please include in said Transcript the following papers and proceedings and no others, to wit:

1. The bill of complaint, with the English translation of the Exhibit thereto, filed June 14th, 1909.
2. The demurrer and plea filed to said bill by the defendants on March 21st, 1910.
3. The journal entry made in said cause on July 7, 1910.
4. The opinion of the court sustaining defendant's demurrer, filed July 23, 1910.
5. The decree dismissing the bill of complaint, entered July 28, 1910.
6. Complain-t's petition of appeal, appeal bond, and assignment of errors, filed on September 24, 1910.
7. The order of the court granting the appeal.

(Signed) N. B. K. PETTINGILL,
R. H. TODD,
Counsel for Complainant and Appellant.

8. Citation, filed September 29, 1910.
9. Præcipe for record, filed Sept. 24, 1910.

35 In the District Court of the United States for Porto Rico.

646. Equity.

DOMINGA ENRIQUETA DUMEY
vs.
YSABEL HERNANDEZ Y BELLO et al.

I, John L. Gay, Clerk of the District Court of the United States, in and for the District of Porto Rico, do hereby certify the foregoing thirty-three typewritten pages, numbered from 1 to 33 inclusive, to be a true and correct copy of that part of the record and proceedings in the above entitled cause, as called for by the præcipe of the appellant, and as same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 18th day of October, A. D., 1910, at San Juan, Porto Rico.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk District Court of the United States for Porto Rico.

35½ [Endorsed:] No. 646. Equity. In the District Court of the United States for Porto Rico. Dominga Enriqueta Dumey vs. Isabel Hernandez y Bello, et al. Record on Appeal.

36 In the District Court of the United States for Porto Rico.

Equity. No. 646.

DOMINGA ENRIQUETA DUMEY
vs.
ISABEL HERNANDEZ Y BELLO et al.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Isabel Hernandez y Bello, Nicolas Morell y Hernandez, Tomas Morell y Hernandez and Maria Morell y Hernandez, and Tord, Toro & Canales, their Counsel of Record, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the City of Washington, within sixty days from the date of this writ, pursuant to an appeal duly allowed and entered in the Clerk's office of the District of the United States for Porto Rico, in a suit wherein Dominga Enriqueta Dumey is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said complainant and appellant, as in the said order allowing an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John J. Jenkins, Judge of the District Court of the United States for Porto Rico, and the seal of said court, this 24th day of September, A. D. 1910.

JOHN J. JACKSON, *Judge.*

[Seal United States District Court for the District of Porto Rico.]

Attest:
JOHN L. GAY, *Clerk.*

Service of the above citation and receipt of a copy thereof admitted this — day of September, 1910.

LOPEZ, TORD & CANALES,
Counsel for Isabel Hernandez y Bello et al., Appellees.

37 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
The District of Porto Rico, ss:

I hereby certify and return that I have served the annexed Writ on the therein named Isabel Hernandez y Bello et al. by sending through the Registered Mail, as per Attorney's instructions, a true and correct copy thereof to Lopez, Toro & Canales, as Counsel of Record of the said Isabel Hernandez y Bello et al. at Ponce P. R. in the said District on the 27th day of September 1910.

H. S. HUBBARD,
U. S. Marshal.
JOHN L. HAAS,
Chief Deputy.

38 [Endorsed:] No. 646. Equity. In the District Court of the United States for Porto Rico. Dominga Enriqueta Dumey, vs. Isabel Hermandez y Bello, et al. Citation. Filed. Clerk's Office United States District Court. Sept. 29, 1910. John L. Gay, Clerk of the Court. By N. V. Colburn, Deputy. Marshal's fees: Service, $2.00. C. Expenses, —.

Endorsed on cover: File No. 22,375. Porto Rico D. C. U. S. Term No. 160. Dominga Enriqueta Dumey, appellant, vs. Isabel Hernandez y Bello, Nicolas Morell y Hernandez, Tomas Morell y Hernandez and Maria Morell y Hernandez. Filed November 1st, 1910. File No. 22,375.

18

Office Supreme Court, U. S.
FILED.
JAN 17 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 141.

EMILIA RIJOS CORDOVA, APPELLANT,

vs.

TERESA FOLGUERAS Y RIJOS ET AL.

No. 160.

DOMINGA ENRIQUETA DUMEY, APPELLANT,

vs.

ISABEL HERNANDEZ Y BELLO ET AL.

BRIEF FOR APPELLANTS.

N. B. K. PETTINGILL,
Counsel for Appellants.

(22,327 and 22,375)

SUBJECT INDEX.

	Page
Statement of the cases	1
Assignment of errors	3
Argument	4
I. Statutes held to have barred these actions not applicable.	5
II. Causes of action alleged entitled appellants to relief prayed	24
III. The law of Porto Rico fixes no limitation of suits between heirs	35
IV. Conclusion	36

List of Citations from American Reports.

Armsterdam *vs.* Puente, 16 P. R. Rep., 527	12
Brown *vs.* Walker, 161 U. S., 591	23
Cope *vs.* Cope, 137 U. S., 683	25
Copper Queen Co. *vs.* Arizona, 206 U. S., 474	12
Co. Com'rs *vs.* New Mex., 215 U. S., 296	12
English *vs.* Arizona, 214 U. S., 359	12
Gray *vs.* Dye, 208 U. S., 519	12
Gual *vs.* Bonafoux, 15 P. R. Rep., 545	10
Henrietta, etc., Co. *vs.* Gardner, 173 U. S., 123	23
Kealoha *vs.* Castle, 210 U. S., 149	12
Ramos, *Ex parte*, 9 P. R. Rep., 439	14
Robinson *vs.* Belt, 187 U. S., 41	23
Royal Ins. Co. *vs.* Martin, 192 U. S., 149	4

List of Citations from Supreme Court of Spain.

Volume	1, page 220	29
	11, 77	16
	11, 241	16
	11, 921	29
	29, 113	16
	77, 880	29
	80, 111	16
	84, 771	18
	88, 430	30
	94, 520	31
	94, 695	16
	94, 757	13
	104, 74	19
	105, 1056	36
	111, 124	20

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 141.

EMILIA RIJOS CORDOVA, APPELLANT,

vs.

TERESA FOLGUERAS Y RIJOS ET AL.

AND

No. 160.

DOMINGA ENRIQUETA DUMEY, APPELLANT,

vs.

ISABEL HERNANDEZ Y BELLO ET AL.

BRIEF FOR APPELLANTS.

Statement of the Cases.

Both these cases come on appeal from the courts of Porto Rico, the first from its Supreme Court and the second from the District Court of the United States for that district. Both were decided below upon demurrers to the respective com-

plaints, and the decision in each was based upon the proposition that appellant's statement of her cause of action showed upon its face that it was barred by the statute of limitations—that is, by prescription, as it is ordinarily called in the Spanish law. In No. 160, as shown by his opinion (Record, p. 17), the Federal judge based his decree upon decisions of the Supreme Court of Porto Rico, citing among others the decision of the latter court in No. 141 itself.

The cause of action as stated by each complainant was founded upon a claim of right to inherit an aliquot part of the estate left at his death by the person alleged to be her father, the basic allegations in each case being that, admitting her parents were not legally married, they were at the time of her conception and her birth *capable* of contracting legal marriage with each other; that after birth she was duly recognized as his child by the father, both by words and by acts, continuously and consistently for a sufficient time to have obtained a *status* as such recognized child, and that under the law as existing at the death of the father she was because of such *status* entitled to inherit as an heir a specified portion of his estate. Each complaint contained a prayer, among others, that complainant therein be decreed entitled as such heir to the aliquot part of said estate claimed, and that the same be liquidated in amount or set-off in kind.

As already stated, the demurrer in each case raised the question of the prescription of the cause of action as alleged, and each was sustained against the complainant, now appellant, on that ground and judgments of dismissal entered without leave to amend (No. 141, pp. 6, 11; No. 160, p. 18).

As different laws or statutes governing this question were in force in Porto Rico at different periods, it is necessary for a proper application of the law to the facts (allegations being regarded as facts upon demurrer for present purposes) that the dates of the birth of each complainant and of the death of her father be borne in mind. Those dates are as follows:

In *No. 141,* appellant was born between 1863 and 1869, the exact date not being alleged and not being important, as there was no change in the law during that time, and her father died in the latter year, 1869.

In *No. 160,* appellant was born in 1875 and her father died in 1899, in Mallorca, Spain, to which place he had removed from Porto Rico in the year 1889. In December, 1899, the three legitimate children obtained from the court in Mallorca a "declaration of heirship" in their favor, ignoring the existence of appellant (pp. 2, 3).

No formal assignment of errors was filed in No. 141, and only a single error was assigned in No. 160 (p. 20) at the time of taking the appeals; so, as the Federal court in the latter case gave no reason for its action other than the precedent of the former—which it followed—and as the one presents no essentially different questions from the other as to the points here involved, the following assignment, equally applicable to both, may be here stated pursuant to Rule 21 of this court.

Assignment of Errors.

1. The court below erred in holding that appellant's cause of action was barred either by article 137 of the Civil Code of 1889 or by section 199 of the Revised Civil Code of 1902.

2. The court below erred in holding that, in order to state a sufficient cause of action of the nature of that stated in the bill of complaint or complaint in these cases, some solemn authentic act of recognition on the part of the father, or some record thereof, or a declaration to that effect by a competent court must be alleged.

3. The court below erred in sustaining defendants' demurrer and entering judgment for defendants thereon.

ARGUMENT.

The jurisdiction of the respective courts below was not questioned. The jurisdiction of this court depends upon the amount involved being over five thousand dollars (Royal Ins. Co. *vs.* Martin, 192 U. S., 149, 159).

That the amount involved in *No. 160* was at least ten thousand dollars is directly shown by the allegations of paragraph IX of the bill of complaint (p. 4), appellant claiming a one-sixth part of the value there alleged (p. 6).

There is no allegation of the value of the inheritance claimed in *No. 141*, but reference is made in paragraph 5 of the complaint (p. 2) to the specific properties included therein, of which appellant claims a one-fifth share (p. 4). This has been supplemented by the filing in this court of an affidavit on her behalf, accompanied by a certificate of the assessed value of those properties as fixed by the government of Porto Rico for the purposes of taxation. Notice of the presentation of these documents, with copies of the same, has been served upon counsel for appellees in that case. No question of jurisdictional amount has been raised by motion to dismiss, and we think it clear from said affidavit and certificate that much more than the minimum jurisdictional amount is shown to be involved.

We therefore proceed to the discussion of the question of prescription, the ground upon which both cases were decided below, taking as a basis for such discussion the reasons stated by the Supreme Court of Porto Rico in *No. 141*, as those reasons were followed by the Federal court in the decision of *No. 160*, leaving for subsequent consideration the question of the sufficiency of the cause of action stated, as that ground was referred to only by the Supreme Court of Porto Rico in *No. 141*.

I.

Statutes Held to Have Barred These Actions Not Applicable.

It will hardly be controverted that the laws successively in force in Porto Rico regulating the rights of recognized natural children may be divided into three periods: First, from the 16th century down to the year 1889 there was in force the law generally known as Law Eleven of Toro, which later came to form Law 1, title 5, of Book X of the Novísima Recopilación; second, from 1889 to 1902 they were governed by the applicable provisions of the Civil Code of Spain, which had been extended to Porto Rico; and, third, from 1902 to the present time the corresponding provisions of the Revised Civil Code, enacted by the Legislature of Porto Rico in said year 1902.

In order that the laws of these different periods may be concisely presented to the court for comparison, we insert them here, prefacing them with the suggestion that, as the law of Toro dates from the year 1505, its language is naturally archaic and not easily translatable literally, but we submit the translation following as one which does not materially depart from its true meaning:

(*Law Eleven of Toro.*)

> "In order that there may be no doubt as to who are natural children, we hereby order and direct that those shall be deemed natural children whose fathers at the time of their conception or birth could have married their mothers freely without dispensation of the church; likewise, if the father should recognize it as his child, although he was not openly living with the woman of whom it was delivered, or not with her alone.
>
> "Whenever there may be united in a child the above circumstances we direct that it be held to be a natural child."

(Civil Code of 1889.)

"Art. 129. A natural child may be acknowledged by the father and mother jointly or by only one of them.

"Art. 131. The acknowledgment of a natural child shall be made in the record of birth, by will, or by any other public instrument.

"Art. 133. A child of age cannot be acknowledged without its consent.

"When the acknowledgment of the minor is not made in the record of birth or in a will, judicial approval, with a hearing of the Department of Public Prosecution, shall be required.

"Art 134. An acknowledged natural child has a right:

"1. To bear the surname of the person acknowledging it.

"2. To receive support from the same, in accordance with article 143.

"3. To receive, in a proper case, the hereditary portion fixed in this Code.

"Art. 135. The father is obliged to acknowledge the natural child in the following cases:

"1. When an indisputable paper written by him, expressly acknowledging his paternity, is in existence.

"2. When the child is in uninterrupted enjoyment of the status of a natural child of the defendant father, justified by direct acts of the said father or of his family."

* * * * * * *

"Art. 136. The mother is obliged to recognize the natural child:

"1. When the child is, with regard to the mother, included in any of the cases stated in the preceding article.

"2. When the fact of the birth and the identity of the child are duly proven.

"Art. 137. The actions for the acknowledgment of natural children can be instituted only during the life of the presumed parents, except in the following cases:

"1. If the father or mother died during the minority of the child, in which case the latter may institute the action before the expiration of the first four years of its majority.

"2. If, after the death of the father or mother, some instrument, before unknown, should be discovered, in which the child is expressly acknowledged. In this case the action must be instituted within the six months following the discovery of such instrument."

(*Revised Civil Code of 1902.*)

"SEC. 187. Illegitimate children may be recognized in any way by the father and the mother conjointly, or by either of them.

"SEC. 188. Illegitimate children may prove their paternal and maternal descent.

"SEC. 189. A father is obliged to recognize his illegitimate child in the following cases:

"1. Where there be an authentic statement in writing made by him expressly recognizing its paternity.

"2. When publicly or privately he has shown that it is his child, or has called it as such in conversation, or looks after its education and maintenance.

"3. When the mother was known to have lived in concubinage with the father during the pregnancy or birth of the child, or when the child was born while his parents were engaged to be married.

"SEC. 191. An illegitimate child has the right:

"1. To bear the surname of the person recognizing him.

"2. To be supported by the same.

"3. To the inheritance determined in this Code.

"SEC. 198. The filiation of children shall be proved by the certificate of the birth issued by the civil registry, by the possession of the status of filiation, or by any other legal means.

"SEC. 199. Any action to claim filiation may be filed at any time within two years after the child shall become of age, and it shall be transmitted to his heirs, if he should die during his minority, or in a state of lunacy. In these cases heirs shall have five years during which to enter an action."

At the end of each of the codes of 1889 and 1902 are found certain "transitory provisions" (*disposiciones transitorias*), of which the pertinent paragraphs read as follows:

> "The changes introduced by the reforms made in the Civil Code, which prejudice rights vested according to the previous civil legislation shall not have retroactive effect. To apply the corresponding legislation in cases not expressly defined in the Revised Code the following rules shall be observed:
>
> "1. The rights originating under the legislation previous to the Revised Code from acts which took place while it was in force shall be governed by the previous legislation even though the said Code regulates them in a different manner or does not recognize them. But if the rights shall appear and be declared for the first time in the Revised Civil Code it shall have a prospective effect, even though the act which produces it shall take place under the previous legislation. Provided that it be not in conflict with or prejudicial to another right born or acquired through the operation of the said previous legislation."
>
> * * * * * * *
>
> "4. Actions and rights born and not exercised before the Revised Code goes into operation shall continue with the duration and in the terms and the extent to which the preceding legislation may have recognized them, but are subject with reference to their exercise, duration and proceedings to enforce them to the provisions of this (revised) Code."
>
> * * * * * * *
>
> "6. The rights to the inheritance of him who has died with or without a will before this (revised) Civil Code goes into effect shall be governed by the previous legislation; the inheritance of those dying afterwards with or without a will shall be settled and partitioned in accordance with this (revised) Civil Code, but carrying out testamentary provisions in so far as this Code permits."

There is a slight difference in the translation of the fourth provision above as found in the War Department edition of the Code of 1889 from the original English of the Revised Code (the former being inserted in the opinion of the court in *No. 141,* Record, p. 9), but the difference is verbal rather than substantial, and, as said by the Supreme Court in said opinion after the quotation (same page of Record):

> "The 4th transitory provision of the Revised Civil Code is the same as the 4th transitory provision of the old Civil Code."

A comparison of the respective provisions of these three sets of laws as to the *voluntary* recognition of natural children leads easily to the conclusion that the provisions of the Code of 1889, articles 131 and 133, are quite different from those of the previous law of Toro or the subsequent Code of 1902, sections 187, 188, and 198—so different as to impel the thought that a change in the law was intended by the legislators in each case, a change *from* the law of Toro by the makers of the Code of 1889, and a change again *back to* that law substantially by the enacters of the Code of 1902. The provisions as to *obligatory* recognition are also dissimilar as to the prof necessary, as shown by a comparison of article 135 of the old Code with section 189 of the new, and their only similarity is the insertion of a time limit for the *obligatory action* in article 137 and section 199, a provision which the law of Toro entirely lacked.

The opinion of the Supreme Court of Porto Ricco in *No. 141* (pp. 8-11) seems to indicate some confusion of thought and it is hard to distinguish the portion of its reasoning referring to the defense of prescription from that referring to the merits of the case as stated in the complaint But in the second paragraph attention is called to the fact that the allegations of appellant's complaint showed she was at least thirty-eight years old, and the third paragraph continued:

> "Such being the case, and inasmuch as it does not appear * * * that an action of filiation had been brought by her at any time before the institution of this suit, it is plainly evident that her right, if she ever had any, to obtain a judicial declaration involving her recognition as natural daughter was prescribed by force of law at the time when the complaint was filed."

Then, after extracting from the laws the various provisions as to limitation of actions and the fourth transitory provision defining the extent of the continued existence of rights arising before the existence of the codes, the court quotes from its previous opinion in the *Gual case* (15 P. R. Rep., 545), "construing the fourth transitory provision," and reaffirms the construction therein adopted, to the effect that rights arising before the codes existed were subject in their *duration* to the provisions of those codes; hence that appellant's right of action had prescribed under the limitation provisions of both codes in the sections aforesaid—that is, as the court expressed it (p. 10), that—

> "Even accepting, with regard to the case at bar, that the plaintiff could have exercised the action of filiation at the time of the promulgation of the Revised Civil Code, and that the term allowed in section 199 could be favorably applied to her, her action would still be barred, because the plaintiff allowed the said term to expire with excess without claiming the recognition of her right."

It is thus evident that the court held the right of action of appellant barred because of the application of both article 137 of the old Code and section 199 of the new; and, further, that it held both of those articles applicable *because of* the construction given to the fourth transitory provision of either Code, considering them to be identical. If, therefore, that construction of the fourth transitory provision was erroneous, if the *duration* of that right of action was "exempted from

the provisions of the Code" and not governed by either article 137 or section 199, the foundation for the court's conclusion fails; and, as no statute of limitations was asserted other than those two articles, prescription was not well pleaded and the court had no right to sustain defendants' demurrer upon that ground.

This branch of the case therefore turns upon the correctness of that construction of the fourth transitory provision of the codes. In adopting the construction it did the Supreme Court of Porto Rico was well aware that such construction was contrary to that previously and repeatedly announced by the Supreme Court of Spain, because in its opinion in the same *Gual case* from which quotation is made in the opinion in this case it was further said by that court (at page 555):

> "We are not unmindful of the judgment rendered by the Supreme Court of Spain on April 11, 1906, establishing the doctrine that article 137 of the Spanish Civil Code should not be understood as limiting the exercise of the action for the acknowledgment of natural children to those born under Law 11 of Toro; but against that judgment we can set up the one rendered by the same Supreme Court of Spain on December 19, 1902, where, notwithstanding the fact that it had reference to the acknowledgment of a natural daughter born under Law 11 of Toro, it sustained the opposite doctrine. Regarding the limitation of the exercise of the action for acknowledgment, we are not aware of any judgment other than the two mentioned above, which are in open contradiction to each other, and we accept the second because to our mind it is more in accord with the letter and spirit of rule four of the temporary provisions for the application of the former Civil Code."

And it has in a later case also been said:

> "The meaning of the fourth transitory provision of the Civil Code has been well discussed in the case of *Gual vs. Bonafoux*, and it is unnecessary to repeat

what is said there. We do not agree with the construction placed by the Supreme Court of Spain upon the fourth transitory provision of the Civil Code, and we think it is plain that when it speaks of the duration, it refers to the time in which an action may be brought."

Armsterdam *vs.* Puente, 16 P. R. Rep., 527, 533.

It thus stands conclusively admitted that the decisions of the Supreme Court of Spain upon this point support our contention; hence citations are unnecessary for that purpose. The question, then, resolves itself into this: Which line of decisions upon this point should receive the approval of this court? We claim that the decisions of the Supreme Court of Spain should be approved and followed for two reasons: First, because they are clearly right; and, second, because the fourth transitory provision, having been derived from the law of Spain and adopted by Porto Rico after its construction in the respect now under discussion had been settled by the Spanish court, must be considered to have been adopted with that construction as a part of it.

First Reason.

Were this statute to be regarded as one enacted by the territorial legislature, we are aware of the weight this court has said it will give to the construction placed upon its statutes by the Supreme Court of a Territory.

Copper Queen M. Co. *vs.* Arizona, 206 U. S., 474, 479.
Gray *vs.* Dye, 208 U. S., 519.
Kealoha *vs.* Castle, 210 U. S., 149.
English *vs.* Arizona, 214 U. S., 359, 363.
Co. Com'rs *vs.* New Mex., 215 U. S., 296, 305.

While these cases use varying language, the different expressions are clearly intended to be practically synonymous

and may be summed up in this sentence, taken from the *Copper Queen Mining Company* case:

> "While this court cannot refuse to exercise its own judgment, it naturally will lean toward the interpretation of the local statute adopted by the local court."

But even conceding to the provision in question, for the sake of the present argument, the character of a territorial statute, we think we may succeed in overcoming not only the "natural leaning" of this court spoken of in the above quotation, but also can convince it of the "manifest error" in construction which is made the criterion in the *English* case, *supra*. As the first step toward that end we are impelled to call the attention of this court to some misapprehensions under which the court below labored in arriving at its conclusions.

In the quotation hereinbefore made from the *Gual* case, wherein was discussed the contrary conclusion of the Supreme Court of Spain, reference was made to a decision of that court dated April 11, 1906, and against it was "invoked the decision rendered" by the same court on December 19, 1902, and the two decisions were said to be "in open contradiction to each other." A careful reading of that decision of December 19, 1902 (94 Juris. Civil, 757), will demonstrate that the question upon which the decision of the later case rested was *not directly involved*. The decision of later date was rested squarely upon the holding that a *status* of recognized natural child acquired while Law 11 of Toro was in force was a sufficient basis upon which to obtain from the court a judicial confirmation of such *status* and the possession of the property rights which it entailed. On the contrary, the plaintiff in the earlier case, though *born* under the law of Toro, did not allege nor claim a *status* of recognition under that law, but based his right upon a *single document* claimed to have been signed by the alleged father but bearing a date *prior* to the birth of the plaintiff. The court sim-

ply held that such a document, because of its priority of date, was not sufficient proof upon which to found recognition under *any* law. Neither the method nor effect of recognition under the law of Toro was involved, because the court expressly found that the child had never claimed recognition under the law, but that whatever claim of right he had was acquired *after* the old Code was enacted. Hence, when the Supreme Court of Porto Rico elected to "accept" the Spanish decision of December 19, 1902, because "more in accord with the letter and spirit of rule four," it was accepting something created by itself, not anything decided by the Supreme Court of Spain in that case.

In the same quotation from the *Gual* case the court further stated that it was not aware of any judgment of the court of Spain, other than the two above described as "in open contradiction," wherein was involved "the limitation of the exercise of the action for acknowledgment." If that statement was intended to include such limitation as applied to actions for the enforcement of rights derived from the possession of a *status* under the law of Toro—which that court seems to persist in regarding as actions for acknowledgment—its research must have been incomplete, as other such cases will be cited below among those supporting our contention that the court of Spain was correct in its construction of the fourth transitory provision.

Moreover, it is the Supreme Court of Porto Rico and not that of Spain which has shown inconsistency in its decisions upon the rights of natural children and the proper proceedings for their recognition. In the year 1905 the former court decided the case reported as *Ex parte Ramos*, 9 P. R. Rep., 439. It is described as *ex parte* because it was brought under the law governing proceedings of *voluntary* as distinguished from *contentious* jurisdiction. The petition prayed the trial court to declare Pedro Alcántara the intestate heir of one Aurel Mergé because of a recognition as his natural child contained in a certificate of baptism. As the regulations

then governing such suits of voluntary jurisdiction required notice to be given only to the proper government official, that official appeared and opposed the petition, and the trial court denied it. Upon appeal the Supreme Court, while affirming the judgment because the certificate of baptism (which appeared to be defective) without other proof was not *sufficient evidence* of a recognition, concluded its opinion by saying (p. 443):

> "When documents properly proving the quality of heirs are lacking, as occurs in the present case, but *proofs of a different kind* sufficient to show the natural filiation could be presented, we see no objection to applying the procedure which is established by chapter 3 of the law governing special legal proceedings approved on the 9th day of March of the present year."

Chapter 3 of the law of March 9, 1905, is found on page 218 of the "Laws of 1905" of Porto Rico and is entitled "Declaration of Heirship"—wherefrom it is plainly to be inferred that at that time the Supreme Court held the opinion that natural children possessing non-documentary proofs of recognition by the parent might make such proofs the basis of being judicially declared the heir of the parent. Yet five years later the same court made the following declaration:

> "Diligence of counsel has been unable to find any authority for the contention that an act of filiation is unnecessary where natural children have been acknowledged as in the case before us (*i. e.*, where proof was non-documentary). There is no authority for sustaining that if they have been so acknowledged they need only appear before the court and ask for a declaration of heirship in the same way as legitimate children."
>
> Armsterdam *vs.* Puente, 16 P. R. Rep., 527, 532.

A rather notable example of judicial amnesia. Moreover, not only one but several decisions to the same effect can be found in the reports of the Supreme Court of Spain. One such, in which the statement is very explicit, was rendered on June 28, 1895, upon the following state of facts: The child was born in 1869, the father died in 1889, and the collateral heirs shortly thereafter petitioned for a "declaration of heirship" in their favor. The child had never been recognized by formal document or the judgment of any court, but intervened through its guardian in the proceeding of the collateral heirs, alleging a *status* as recognized natural child because of continual treatment as such from his birth and asking that he also be declared an heir. The Supreme Court sustained that procedure and in declaring the principle said:

(*Translation.*)

> "The possession of the *status* of natural child requires nothing more than the continuation of acts which present a person in the uninterrupted relation of a natural child, and *excludes the necessity* of being newly recognized in the form required by the Civil Code."
>
> Juris. Civil de Esp., vol. 77, p. 880.

Other cases to the same effect are the following, identified by date of decision and volume and page of report, since cases in those reports are not entitled by name: March 2, 1865, vol. 11, p. 241; January 10, 1874, vol. 29, p. 113; March 26, 1904, vol. 94, p. 695, and July 9, 1896, vol. 80, p. 111. Several of these are again referred to in another connection.

In marked contrast to the inconsistency and vacillation shown in the foregoing decisions of the Supreme Court of Porto Rico touching the rights of natural children, those of the Supreme Court of Spain show clearness, consistency and continuity. Concerning the particular point now under dis-

cussion, to wit, the construction of the fourth transitory provision of the Code of 1889, the decisions naturally begin several years after the adoption of that Code, but we find one as early as July 9, 1896, which is followed by another of September 23, 1898. In this latter a mother had sued the alleged father to compel the recognition of her child, so there can be no question that it was an "action for filiation." The child had been born in 1884, but the suit was begun after the Code of 1889 was in force and was based upon a claim of *status* acquired before the Code, under the law of Toro, and evidenced solely by acts *in pais*. The lower courts decided in favor of plaintiff, adjudging the father to execute a notarial document of recognition. The latter appealed on the ground that the judgment violated even the law of Toro, if that were applicable, but the principal claim was that article 135 of the Code was applicable, instead of the law of Toro, because of the fourth transitory provision. In answer to these contentions the court said:

(*Translation.*)

"In order that a child born in the time of Law 11 of Toro of parents who were capable of contracting marriage without dispensation be considered a natural child, it is sufficient under the decisions construing that law that the parent may have recognized the child either expressly or tacitly, whether such recognition be written or verbal.

"Contrary to the contention of appellant, it is clear that the law of Toro is applicable to a child who invokes it, because his rights arose when the same was in force, since the fourth transitory provision of the Code only gives retroactive force to those provisions of that Code which refer to the manner of exercising pre-existing rights, to their duration or to the proceedings for enforcing them, *no one of which includes* the provision of article 135 *relating to the recognition* of the paternity of natural children, because it is evident that *recognition affects the very existence of the right*, as likewise it is the act which

determines the right in favor of the child who, by reason of his birth, has capacity to be recognized. Consequently, the judgment appealed from does not involve any of the errors alleged in support of the appeal; wherefore, taking as proven, among the other facts of secondary importance in the decision of this case, the fact that appellant has recognized the paternity of the child, although he may have done so merely verbally, and *as the right claimed was acquired prior* to the Civil Code, the court could and ought to have sustained the complaint *according to the law of Toro.*"

Juris. Civil de Esp., vol. 84, pp. 771, 773.

Still another case of similar application is that decided on April 11, 1906, where the court expresses itself as follows:

(*Translation.*)

"Where, as in case of the present appeal, there is involved a natural child whose rights are held to be governed by the Law 11 of Toro, and it has been believed and found by the trial court that these rights have been recognized by the father previous to the publication of the present Code (1889), it is proper to apply the first transitory regulation of this Code in its full scope, without it being possible, under such a supposition, to be understood that any restriction is placed upon the bringing of the suit to obtain from the courts the sanction of such recognition according to the provisions of article 137 of said Code, since the fourth transitory regulation itself prescribes that rights existing and not exercised before the Code went into effect shall continue to the extent and according to the terms which the former legislation concedes to them; and the *right thus recognized in the natural child* in all its necessary extension *would become diminished* and its *force and efficacy taken away if,* in spite of its having occurred at a time previous to the publication of the Code and under the conditions of the law of Toro, *there should be given to the second part of that fourth regulation the meaning and interpretation which the appellant*

> *claims* in his first ground of appeal, a contention which might be more plausible if the acts of recognition attributed to the father should all have occurred subsequent to the publication of the Code."
> Juris. Civil de Esp., vol. 104, p. 74.

Although perhaps superfluous, we are tempted to quote briefly from a case still more recent because of the coincidence that, although the litigation took place in Spain, the child was born in Porto Rico in 1845. The alleged father and returned to Spain, where he continued to live until 1901, when he died possessed of a large estate, and the natural child began there in 1902 the suit, which is described as an "ordinary declaratory suit." She set up as the basis of her claim various acts *in pais* resulting in a *status* of recognized natural child continuing from birth to the time of the father's death. No formal recognition within the provisions of article 135 of the Code of 1889 was claimed or proven. Among the defenses were the prescription of the action and the failure to allege the bringing of a prior suit establishing a "recognition in form." The judgment of the trial court was in her favor, declaring: first, that she was the natural daughter of the alleged father; second, that she had the right to use his name; and third, that as such natural child she had the right to receive her legitimate portion of the inheritance. The intermediate court of appeals reversed that decision and sustained the defense of prescription. The Supreme Court in turn reversed the decision of the intermediate court and affirmed that of the Court of First Instance, its first "considerando" stating as follows:

(*Translation.*)

> "As the facts on which the complaint which is the origin of this suit is fundamentally grounded occurred prior to the publication of the Civil Code, the law applicable, according to the provisions of the first of the transitory rules of said Code, so recognized in

the judgment appealed from, is that which was at that period in force; that is, Law 11 of Toro, which regulated the concept of natural children. That law was invoked in the complaint and can be considered, although certain precepts of the Code were also depended on, since under the legal principle stated therein in paragraph 6 are cited various decisions of this Supreme Court necessarily based upon said law of Toro; and, this being admitted, it is undoubted that the *court appealed from,* upon dismissing the complaint for the reason that the *action has been prescribed* on account of being brought after the death of Don Antonio Morea, *applying for that purpose article* 137 *and the fourth transitory provision* of said Code, *violated both those legal precepts* because of *unwarranted application,* since, as the *jurisprudence of this court has repeatedly declared,* the transitory provision indicated *refers to matters purely of procedure,* and *the right* which said Law 11 of Toro sanctions *is substantive,* even in that which relates to the permanence of the action, independent of every question of procedure.

Juris. Civil de Esp., vol. 111, p. 124.

See also,

Decision of April 2, 1909; Juris. Civil, vol. 114, p. 363.

There could be no pronouncement of any court clearer or more logical than those contained in these decisions—principles which it is said that court "has repeatedly declared," and which are, as collected from the various decisions: that the fourth transitory provision is confined in its application to matters purely of procedure; that the recognition of a natural child is not matter of procedure but affects the very existence of the right to claim and receive its legal consequences, hence is substantive in its nature even in respect to the permanence of the action to obtain it; and that a construction which would allow such substantive rights, acquired before the existence of the Civil Code, to be

subjected to the restriction of its provisions by reason of the fourth transitory provision of the same would diminish such rights in their necessary extension and deprive them of their force and efficacy under certain circumstances. Therefore, such construction must be rejected as contrary to its reasonable meaning.

We feel confident that this reasoning and this conclusion are so logical and clearly correct as to impel this court not to follow its inclination to "lean toward" the contrary conclusions of the Porto Rican court, but to declare that the latter has committed the "manifest error" which must be corrected, even looking at the statute as a territorial enactment, since, under such circumstances this court "cannot refuse to exercise its own judgment."

Copper Queen Co. *vs.* Arizona, *supra.*

Second Reason.

There is, however, no necessity of making the concession that this fourth transitory provision should be regarded as a territorial statute, in the sense that its construction was a matter to be determined as one of first impression by the Supreme Court of Porto Rico. That court itself admitted in its opinion in this case, as hereinbefore quoted, that said provision as contained in the Revised Code of 1902 was "the same as," hence a re-enactment of, the fourth transitory provision of the Code of 1889.

Now, the Civil Code of 1889 was the Civil Code of Spain extended to Porto Rico in said year 1889 by royal decree, and continued in force in Porto Rico as a Spanish law from that year until the Treaty of Paris, or rather until the military occupation of Porto Rico by the United States on October 18, 1898, when it was allowed to remain in force as a part of the "provincial and municipal law" by General Orders No. 1, issued by the commanding general of the Department of Porto Rico, on that date; and, thereafter, it

was continued in force by section 8 of the act of Congress of April 12, 1900 (31 Stats. at Large, 85), known as the civil government act for Porto Rico, until the enactment of said Revised Code in 1902. Moreover, the rights claimed by these appellants in their complaints were rights bestowed by the laws of Spain while Porto Rico was a Spanish province, and, if they were to be taken away by Spanish laws subsequently enacted, such deprivation should be at least in accordance with those laws as construed by the Supreme Court of Spain itself, not by a new construction put upon them by the territorial court of the new sovereignty.

Indeed, this court has recently so held in a case quite similar in principle to these cases at bar, although the form of suit was different as the decedent had left a last will and testament and plaintiff was claiming an accounting from the executor. The testator had died in 1879 and plaintiff claimed his rights under a law of Hawaii enacted in 1866, which had been expressly construed by the highest court of that country, while it was still an independent sovereignty. That law, like the Code in the present cases, had been continued in force by an act of Congress after the annexation of Hawaii to the United States, and, considering its duty under such circumstances, this court said:

> "The case at bar, however, more cogently calls upon us not to disregard the construction given to the statute by the highest court of Hawaii. Here the law in question was passed while Hawaii was an independent government, and its meaning was declared by the court of last resort of that government; and, as we have said, that law, as thus construed, was given recognition by the organic act. The subject with which the law deals, the rights which may have come into existence during the more than forty years in which the statute has been in force, admonish us that we may not overthrow the meaning given by the court of last resort of Hawaii, and which has prevailed for so many years. Indeed, as the construction affixed to the statute many years before the

islands were acquired was final, in effect that construction had entered into the statute at the time of acquisition, and must by us be considered as if written in the law."

Kealoha *vs.* Castle, 210 U. S., 149, 154.

This decision seems to us conclusive of our contention. The life of the Hawaiian statute may have been longer than that of the Spanish Code, yet the life of Law 11 of Toro (the meaning of which the court of Porto Rico also attempted to modify) was measured by centuries rather than years. No one would suggest that the exact number of years would affect the principle. As has been said by this court in many cases prior to the one just quoted from, if a statute be adopted *verbatim* from another jurisdiction, in which at the time of such adoption its construction and meaning has become settled and "final," such construction and meaning is regarded "as if written in the law."

Brown *vs.* Walker, 161 U. S., 591.
Henrietta, etc., Co. *vs.* Gardner, 173 U. S., 123.
Robinson *vs.* Belt, 187 U. S., 41.
Copper Queen Co. *vs.* Arizona, *supra.*

As the Supreme Court of Porto Rico itself admitted, and as it is a matter of undisputed common knowledge, that the Civil Code of Spain, including its transitory provisions in this case applied, was transferred bodily to Porto Rico, and continued bodily as the law of that territory—in substance, even to the present time—those admitted facts, applying to them the law as declared in the foregoing decisions, lead irresistibly to the conclusion that the Supreme Court of Porto Rico was in duty bound to follow the Supreme Court of Spain in its construction of the fourth transitory provision, under which construction the statutes of prescription interposed as a defense were not applicable to the case made, or to the case which the court of Porto Rico mistakenly held to have been made.

Hence, under either of the aspects above argued, the demurrer on the ground of prescription presented no good ground of defense to the cause of action of either appellant, and the respective courts below committed reversible error in sustaining them on that ground.

II.

Causes of Action Alleged Entitled Appellants to Relief Prayed.

In respect to the sufficiency of the causes of action upon their merits, as stated in the relation of the facts at the beginning of this brief, we believe there is no difference in principle between that stated in the complaint in No. 141 and that in the bill in equity in No. 160.

It is doubtless true that the facts in No. 141 more strongly outrage the moral sense, because the parents of that appellant had every reason to believe they were contracting a legal marriage and lived in that belief, regarded by the community surrounding them as legitimate husband and wife—and it was only after the death of the husband and father that the technical invalidity of the marriage was averred by the collateral relatives in order to deprive appellant Emilia Rijos of her inheritance.

In No. 160, on the other hand, no pretence of actual marriage is made; but, as is demonstrated by the terms of Law 11 of Toro, the existence of concubinage and cohabitation without marriage and the probability of offspring therefrom to be provided for have always been recognized by the Spanish law, and varying provision for them according to the moral sentiments of succeeding generations has been expressly made therein. Similar statutes are not unknown in our own country, and this court itself has suggested in their defense that "the children embraced by them are not re-

sponsible for the state of things, and that it is unjust to visit upon them the consequences of their parents' sins.

Cope *vs.* Cope, 137 U. S., 682.

Under the substantial allegations contained in each pleading, the case made is that of a recognized *status* as a natural child acquired while the law of Toro was in force. Each had reached the age of fourteen or more before the first Code was promulgated, and the father of one died in 1869 while the father of the other removed to Spain in 1889; so that the *status* of both was not only acquired and perfected under the law of Toro but remained without practical opportunity for change from the time of the promulgation of the Code. Each is, therefore, a clear-cut case of a right acquired and vested under the law of one period attempted to be denied because of the requirements of laws enacted at a subsequent period.

Having disposed under the previous head of the question of possible deprivation by prescription, we proceed to inquire by what process of reasoning the Supreme Court of Porto Rico reached the conclusion that, prescription apart, appellant Emilia Rijos was not entitled to recover her share of the estate left by her father. For that purpose we turn to the latter part of the opinion of that court in No. 141 (p. 11) and find the following statement:

> "The natural child derives its right as such from the recognition and in order that the recognition should be considered as made, and have legal effect, it is necessary that the same be made by the father in a solemn manner, with a firm will to make the same, and that a solemn and authentic record thereof be made.
>
> "When, under the laws of Toro, a father executed some acts tending to establish his paternity, which acts, taken by themselves, did not constitute a solemn recognition, and of which no solemn and authentic record was made; when the cases provided for by section 137 of the old Civil Code occurred; and when

> those provided for by section 189 of the Revised Civil Code, now in force, arise; then the action of filiation should, and must, be brought, and the recognition should, and must, be made to appear by the solemn declaration of a competent court."

The translation of the latter paragraph is not very well done, but the meaning undoubtedly is that, whether the case stated is a claim of a *status* under the law of Toro, or of a recognition within the classes specified in article 135 of the old Code, or of one within the like classes described in section 189 of the new Code of 1902—the printing of 137 in place of 135 being evidently an error, as it was meant to correspond with 189 of the new—a plaintiff must allege either that the recognition, if voluntary, was evidenced by some solemn, authentic act or record, or that, if involuntary, it was solemnly declared by some competent court; while a recognized *status* evidenced solely by acts *in pais*, however uncontradicted and convincing, would be held to be insufficient.

That such is its meaning is confirmed by the language of that court in a later case already quoted but here, for convenience, repeated:

> "Diligence of counsel has been unable to find any authority for the contention that an act of filiation is unnecessary where natural children have been acknowledged as in the case before us (by acts *in pais*). There is no authority for sustaining that if they have been so acknowledged they need only appear before the court and ask for a declaration of heirship in the same way as legitimate children."
>
> Armsterdam *vs.* Puente, 16 P. R. Rep., 527.

And it is to be borne in mind that this Armsterdam case was also one based upon the claim of a *status* provable by acts *in pais* under the law of Toro, so that this last declaration must be intended to include that class of cases. So it seems legitimate and logical to conclude that the Supreme Court

of Porto Rico, after giving preference to the ground of prescription as the basis of its decision in No. 141, intended also to hold that in cases of that character no *status* provable only by acts *in pais* could be sufficient basis for a natural child to claim his property rights, whether that *status* were acquired under the law of Toro or some later enactment.

In considering whether that holding is correct as applied to the cases at bar, where the *status* under the law of Toro alone is involved, we are again brought to face the question, To what court should we look for the authoritative interpretation of the law of Toro? If the Code of 1889 is, as we have contended, to be regarded as a Spanish law, much more so must be the law of Toro. As it has never been in force in Porto Rico since long before the change in sovereignty, except as a source of rights *vested* under it *prior to* the Code of 1889, the Supreme Court of Porto Rico, constituted under American sovereignty, cannot be warranted in regarding it as a law of the *forum*, but should approach its interpretation as that of a *foreign* law. When the law of Toro was abrogated and superseded in 1889, the final arbiter of its interpretation was the Supreme Court of Spain—and the same court should be considered the final arbiter today when that interpretation will affect and control rights acquired and fixed under it while it was in force.

We therefore now propose to show that the above holding of the Supreme Court of Porto Rico that some solemn act of filiation or judgment of a court was necessarily precedent to an action to enforce the rights of a natural child, possessing a *status* as such under the law of Toro, has no foundation in the decisions of the Supreme Court of Spain. And, in order to show more clearly that the contrary doctrine has been adhered to consistently without regard to change of other laws, we divide the decisions into two periods, before and after the promulgation of the Code. . . . . .

(1) *Prior to 1889 the status of natural child under Law 11 of Toro could be proven by evidence of acts in pais at the trial of the same suit brought to enforce rights derived from the possession of such status.*

The set of reports known as "Jurisprudencia Civil de España" are the only printed reports of the decisions of the Supreme Court of Spain available in Porto Rico, and they reach back hardly to the middle of the last century. In the earliest decision we have found the law is stated to have been "already decided." The following are cited from that set of reports:

Decision of March 2, 1865 (vol. 11, p. 241).

In this case the facts were that a child, baptized as Francisco José, of unknown parentage, in the year 1841, brought suit by his guardian in 1862 against Juan Villalonga, as sole heir of his brother Ygnacio, alleging that plaintiff was the natural child of said Ygnacio, setting forth acts of recognition tending to establish his *status* as such, but claiming no formal declaration, and praying that he be declared the natural child of deceased and be given the inheritance thus belonging to him. The defendant questioned the sufficiency of such allegations to warrant relief and the trial court decided for defendant. The intermediate court of appeal reversed that holding, declared plaintiff an heir, and adjudicated him a share of the property. Defendant then appealed to the Supreme Court, assigning as error that although recognition might be tacit as well as express, yet in such case the evidence thereof must be *conclusive* according to the law of Toro—which principle had been violated by applying to the proof the ordinary rules of evidence. The Supreme Court, in affirming the judgment appealed from, said:

> "According to Law 1, Title 5, Book X of the newest revision, 11 of Toro, in order that one be considered a

natural child it is sufficient that he be born of parents who at the time of conception or birth might have married without dispensation, and that the father recognize it as his own.

"In order that such recognition be valid it is sufficient that it appear *by any of the modes of proof* which the law prescribes, as this Supreme Court has *already decided*, and that the proof has been held sufficient by the trial court."

Decision of January 10, 1874 (vol. 29, p. 113).

This case is quite similar to the preceding. The child was a minor and the suit was brought by his guardian directly against those who had been declared heirs of his natural father, claiming the rights of a coheir in the estate of the decedent. The Supreme Court sustained his right to bring suit and granted the relief prayed.

See also the following decisions of similar import: October 8, 1853, vol. 1, p. 220; January 26, 1865, vol. 11, p. 77, and June 30, 1865, vol. 11, p. 921.

(2) *From 1889 until the present day the status of natural child acquired under the law of Toro is recognized as conferring a continuing right to the property interests legally accruing from its possession enforceable under ordinary rules of evidence and by ordinary procedure as in case of other property rights.*

Decision of June 28, 1895 (vol. 77, p. 880).

This decision has already been cited in the argument of the *first reason* for approving the decisions of the Spanish court upon the construction of the fourth transitory provision of the Code, but we cannot refrain from again quoting the terse statement made in its "considerando":

(*Translation.*)

"The possession of the *status* of natural child requires nothing more than the continuation of acts which present a person in the uninterrupted relation of a natural child, and *excludes the necessity of being newly recognized* in the form required by the Civil Code."

Decision of July 9, 1896 (vol. 80, p. 111).

In this case the children were born within about two years before the promulgation of the Code of 1889, and it is important as showing that even that short time was held sufficient for the babes to acquire and establish a *status* of recognition under the law of Toro which was recognized and enforced where suit was brought after the Code went into effect.

Decision of September 23, 1898 (vol. 84, p. 771).

This decision also has been already cited and quoted from under the same head as that of June 28, 1895, *ante*, that is, under the *first reason* treated in the discussion of the fourth transitory provision. The first paragraph there quoted is here applicable.

Decision of November 29, 1899 (vol. 88, p. 430).

This decision is interesting because of the prominence of the parties involved and valuable because the large interests at stake doubtless caused the employment of the ablest counsel and a most extensive research of precedents. The Márques de Vista-Alegre died in 1893 testate, the will alleging that he was a bachelor and had no descendants. In 1896, two children of the age of 14 and 9 years respectively brought suit, through their guardian, against the executors of the will, alleging that they had acquired a *status* as natural

children of the Márques *before* the promulgation of the Civil Code and as such had the right to inherit according to that Code, as the father's death had occurred *after* the Code was in force, and praying that their inheritance be set apart and delivered to them. No basis of recognition except the *status* resulting from acts *in pais* was claimed. The decision was in favor of the children in both the inferior courts. The Supreme Court affirmed these decisions, stating the following conclusions:

> "1. That the courts below were right in finding a *tacit* recognition of the children by the Márques by considering *all classes* of proof, and that such recognition was sufficient.
>
> "2. That, under the fourth transitory provision, the recognition of the children, occurring previous to the Code, was governed by the law of Toro, not by the Code; while the *extent* of their inheritance, although based upon a recognition established under previous laws, would be fixed by the provisions of the Code in that regard and enforced to the extent provided in it, as the inheritance was cast after the Code was in force.
>
> "3. That, for the reasons given, the *condition* of natural recognition children *carried with it* the capacity to claim all the rights inherent in that juridical concept.
>
> "4. That the direction to the executors to deliver their one-third of the estate to the plaintiffs was not inconsistent with the full compliance with their duties under the will."

The above case in effect decides every point involved in the two cases now before this court, except the question of prescription.

Decision of March 3, 1904 (vol. 94, p. 520).

In this case the natural child was born in 1852 and the father died in 1898, leaving a will which named his widow as his only and universal heir. The daughter, already married,

brought suit against the widow, claiming the *status* of a recognized child from her birth and the right to her inheritance. The widow defended principally upon two grounds: first, that the daughter had no legal standing as an heir; and second, that she could not bring such a suit after the death of the father. Both lower courts decided in favor of the daughter, and the appeal of the widow was based mainly upon the contention that under the law of Toro acts *in pais*, in order to result in a *status* of recognition, must have been done *with the intent to confer recognition for its legal effects*. The Supreme Court, however, refused to sanction that contention, affirmed the judgments of the lower courts, and repeated the earlier holding that the law of Toro "makes no distinction between express and tacit recognition *nor does it prescribe the manner of establishing it.*"

Decision of April 11, 1906 (vol. 104, p. 74).

This case is very similar in its facts to No. 160. The two plaintiffs had been born in 1869 and 1871, respectively, and the father had died in 1903. They began soon after his death an ordinary "declarative suit of larger quantity" against the brothers of the decedent who had been already declared his heirs, praying that their *status as* recognized natural children be judicially confirmed and that they be adjudged all the rights inherent in that condition as heirs. As the question of whether or not article 137 of the Code was applicable was also involved, an extract from the decision has been hereinbefore given under that head of the argument.

Decision of April 22, 1908 (vol. 111, p. 124).

This is the case, previously cited on another point, in which the plaintiff had been born in Porto Rico in 1845, and the father had lived until 1901, dying in Spain and leaving a large estate. Her suit was, like the one last cited, an "ordi-

nary declaratory suit" and she based her claim solely upon acts *in pais* resulting in a *status* as recognized natural child continuing from her birth until the father's death. No formal recognition, as required by Article 135 of the Spanish Code (1889 of Porto Rico), was alleged or attempted to be proven. One of the defenses specifically made was the absence of a prior suit establishing a "recognition in form." The judgment of the trial court was in her favor and declared: first, that she was the recognized natural daughter of the alleged father; second, that she had the right to use his name; and, third, that as such natural child she had the right to receive her legitimate portion of the inheritance. The intermediate court of appeals reversed that judgment because it held the action barred by prescription, but the supreme court in turn reversed the holding of the intermediate court and *affirmed* that of the court of first instance *in all respects*.

It is but fair to note that this decision had not been brought to the notice of the Supreme Court of Porto Rico up to the time of its decision in No. 141, and probably was not within the knowledge of its members; yet it must have been known to them at the time of their decision in the *Armsterdam* case.

We feel confident that we have now sustained our assertion of the existence of a long and consistent line of decisions of the Supreme Court of Spain supporting the position of the appellants both as to the sufficiency of their causes of action and as to the propriety of their mode of asserting their rights, and in clear contradiction upon both points to the positions taken by the Supreme Court of Porto Rico in No. 141. We believe we have also again demonstrated by these citations that the law as declared by the court of Spain should be followed, not only because the laws involved are of Spanish origin and interpretation (previous to adoption elsewhere), but also because *that court is right*.

The error of the court of Porto Rico seems to have arisen

partly from a lack of clarity of view as to the character of the action brought. These are not "actions of filiation," as it is expressed in the Code. An action of filiation is one to compel a recognition which has never existed, while the very foundation of these actions was the allegation that acts constituting recognition had existed so long and continuously as to have become a *status;* and the purpose of the actions was not "filiation" but a judicial affirmance of a *status* of filiation claimed long to have been realized, and the past (not the future) existence of which warranted and impelled the enforcement of property rights incident to such condition. The court below seems to have had this distinction in mind when, at the beginning of its opinion (p. 8), it described the action of appellant Rijos as one "involving a judicial declaration of the status of natural daughter," but later it was lost sight of in the obscurity of the language of previous decisions.

Moreover, the very arrangement of the articles of the Code of 1889 confirm the idea that the restrictions of article 137 have no relation to cases of voluntary acknowledgment or recognition. Mark that arrangement. Cases of voluntary recognition are first dealt with, beginning with article 129, which says that a natural child "*may* be acknowledged by the father and mother," etc. The several succeeding articles also treat of voluntary acknowledgment, until we reach article 135. In that article the contrary phase of the matter is taken up. "The father is *obliged* to acknowledge the natural child" in the cases specified. Article 136 fixes in like manner when the *mother* is *obliged* to do the same. *Then* comes the article (137) which treats of "*actions* for the acknowledgment," etc. Actions are necessary only when rights are *denied,* and the actions here intended relate solely to the policy of *obliging* the *unwilling* and should have no effect upon the voluntary relations between parents and children where recognition of that relation has always existed. In the present cases there was no need of any *action* in the

lifetime of the parent because the condition of filiation had been voluntarily assumed. The parent during life had never denied it—indeed, in No. 141 had died believing that his daughter was a *legitimate* child—yet it was permitted to other heirs to avoid the legal effects of the ancestor's *volition* conferring the status of filiation upon his child.

III.

The Law of Porto Rico Fixes No Limitation of Suits Between Heirs.

Although the only question of prescription raised below was specifically based upon the statutes which have been discussed, and although no other statute of prescription applicable to the cases is suggested here, we wish to make clear that *no* limitation of action barred these suits.

The complaints respectively allege that the plaintiffs were at that time, and had for a long time been, in the eye of the law, *recognized natural children* of their respective fathers, that as such they had been *heirs* of said fathers from the moment of their death and, as heirs, entitled to inherit an aliquot part of the estate left by them, and they prayed the court to enforce that right of inheritance by adjudging to them their share of the respective estates. Therefore these were suits by one heir against other heirs, or suits among co-heirs, and as to duration were expressly governed by an article of the Code of 1889 which has been transcribed literally into the Revised Code of 1902 as section 1866, and which reads as follows:

> "Art. 1965. Among *coheirs*, co-owners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe."

This article specifies three classes of persons, whose condition it considers similar, and removes the limitation upon one character of action from each. Hence, as applied to the present cases, it may be read: "Among coheirs the action to demand the division of the inheritance does not prescribe." We submit that these cases at bar were actions of that class, hence that no other statute of limitation could apply.

While the Supreme Court of Spain did not specifically name the above statute as its authority, it *has* expressly stated the same conclusion, that the law fixes "no limitation of time for bringing" an action of precisely similar character. (Decision of December 28, 1906, vol. 105, p. 1056.)

IV.

If this court were allowed to divorce itself wholly from the consideration of precedent and from the duty of following conclusions settled by the properly ultimate authority of other jurisdictions (as often occurs in matters of State laws of property), we should not fear the result of a consideration of the questions here involved in the pure light of reason and logic, as well as of an enlightened public policy. Where a natural child is living in harmony and concord with, or under the protection of, its father, treated perhaps in a manner very similar to the legitimate children, if any, and those conditions continue until the natural reaches majority and beyond, it seems to us neither reasonable nor politic to require the child, now grown to manhood or womanhood, to bring discord into the family, perhaps deprive himself of present support, comfort, and affection, and advertise to the world a shame which may have been forgotten, by forcing a father to sign some formal document of recognition, or, in case of refusal even enter upon a contest in the courts—at the cost of forfeiture of a right which the father has never denied, and which it is distinctly against the public interests to

have forfeited. Such a construction of the law, we submit, should not be tolerated unless clearly unavoidable.

We respectfully urge that the judgment and decree of the courts below in these cases be reversed, with directions to require the respective defendants to defend upon the merits.

Respectfully submitted,

N. B. K. PETTINGILL,
Counsel for Appellants in Nos. 141 *and* 160.